

III. *Developing an Early Intervention Strategy*



DEVELOPING AN EARLY INTERVENTION STRATEGY

The costs associated with hiring and training a police officer run in the thousands of dollars. It is in the officer's and our best interest to intercede when an officer is struggling personally or professionally. Without early intervention, we risk losing personnel from our ranks that we might well have been able to keep with intervention.¹

James Hussey, Chief of Cohasset (Massachusetts) Police Department

Introduction

When carefully designed and implemented, early intervention systems can benefit individual officers, police departments, and the community. Increasingly being integrated into broader personnel assessment or risk-management systems, early intervention management strategies provide a means of identifying officers who may be headed for trouble. This strategy offers a crucial opportunity to intervene on behalf of these officers, their departments, and their communities. At the individual level, early intervention can save officers' careers and potentially save lives. Police departments justifiably devote considerable resources and offer extensive training to prevent on-duty deaths and injuries. Nevertheless, at least twice as many law enforcement officers are lost each year to suicide as are killed in the line of duty.² Properly implemented early intervention strategies can provide the assistance that officers working in a highly stressful profession urgently may need.

Individual officers, police departments, and their communities benefit when departments succeed in addressing the factors that contribute to officers' risk for errors in professional judgment, alcohol abuse, and suicide as well as other personal and professional problems. To be fully effective, early intervention must be accepted by officers, supervisory personnel, and communities as an important alternative and complement to disciplinary systems. Through early intervention policies and practices, departments benefit from proactive prevention and actually reduce the need for reactive discipline. When well designed, early intervention programs stress positive performance. The same focused supervisory techniques used to identify the first signs of a problem can also be used to identify and encourage officers whose performance is markedly above average. Communities benefit from a law enforcement agency that has enhanced its commitment to accountability, both internal and external.

Chapter Overview and Objectives

This chapter offers a working definition of early intervention, in part, by drawing on information about early intervention from federal consent decrees and memorandums of agreement (MOA) as well as from promising and innovative early intervention efforts from police departments throughout the nation. It explores a range of practices commonly associated with early intervention and addresses both its benefits and its challenges.

This chapter acknowledges that, much like CompStat and problem-oriented policing, early intervention is a data-driven management strategy. Early intervention efforts are only as effective as the information that is gathered and the managers who use it. The most technologically sophisticated early intervention systems will be severely compromised if data that inform decisions are not collected systematically and if managers are not motivated and trained to take advantage of this tool. Although more and more departments are using early intervention systems, clear data standards and uniform practices have yet to be established.

This chapter deliberately considers early intervention within the context of police departments' other operations. Early intervention efforts do not exist in a vacuum. They must be considered in a broad context, i.e., as part of an integrated agencywide management approach. Early intervention must be coordinated with many areas of police practice. It must be deployed in ways that are consistent with department policies, field operations, supervisory practices, personnel practices, data management practices, and community outreach strategies.

Finally, this chapter argues that early intervention is cost-effective. Although early intervention requires a considerable commitment of department resources and personnel, its effectiveness in identifying indicators of risk among police officers is being demonstrated in a growing number of departments. While the sheer number, variety, and complexity of early intervention systems prohibit a precise cost-benefit analysis at this time, many departments are recognizing that the short-term costs of implementing early intervention, though significant, are less than the long-term costs they will incur without such a system in place.

A Definition of Early Intervention

Early intervention refers to a series of interrelated personnel management processes that help supervisors identify, assess, and evaluate employees' performance for the purposes of addressing potential concerns in a timely manner. Early intervention allows supervisors to address problems in officers' performance before these problems escalate to the point of requiring disciplinary action. Samuel Walker, professor of criminal justice at the University of Nebraska Omaha specializing in police accountability, defines early intervention systems as the "systematic collection and analysis of data on officer performance for the purpose of identifying problems that need to be corrected."³

The Evolution of Early Intervention

Early intervention strategies are continually evolving. Paralleling the development of improved management techniques and technological innovations across all operational areas of law enforcement, early intervention strategies are becoming more prevalent and more sophisticated. Leading examples of early intervention systems include those at the Los Angeles County Sheriff's Department, the Miami-Dade Police Department, the Phoenix Police Department, and the Pittsburgh Bureau of Police.⁴ While all four of these model systems are located in large departments, law enforcement agencies of various sizes and various jurisdictions—municipal, county, state, and special—are now adopting early intervention systems and tailoring them to meet their own needs.

The spirit of early intervention is similarly evolving. Initially, many early intervention systems were designed primarily to detect, and even remove, officers who constituted a risk to their department. Now, these systems tend to be more far-reaching and refined. Today's early intervention systems are designed to identify—at the first sign of a potential problem—officers who might benefit from assistance in the form of counseling, retraining, and other forms of nonpunitive intervention. In this way, early intervention is realizing the vision of those forward-thinking law enforcement leaders who first recognized the value of nonpunitive approaches to promoting police integrity and spearheaded some of the first early intervention efforts.

Indeed, many departments are expanding their use of early intervention systems to identify and reward exemplary officers. The same data systems and management techniques that allow departments to identify officers who may benefit from nonpunitive intervention allow departments to identify officers who are exemplary performers. Early intervention systems may be used to identify an officer who, for example, may be working on highly active and risky details such as drug or gang interdiction units where suspect complaints are commonplace, but who receives very few citizen complaints or use-of-force citations. Departments are also using early intervention systems to identify officers who receive public commendations or awards.

Early intervention systems are expanding in other ways as well. Many departments are using early intervention to enhance management and performance assessment of nonsworn personnel.

Early Intervention: Terminology with a Purpose

The terms “early intervention,” “early warning,” “personnel assessment,” and “risk management” are often used interchangeably for early intervention systems. The federal consent decrees and MOAs generally refer to “early warning” or “risk management” systems or adopt the name of the specific system that was in use in the jurisdiction at the time of the agreement, e.g., The Personnel Performance Management System by the Washington, D.C., Metropolitan Police or TEAMS II by the Los Angeles Police Department.

When discussing specific systems, this guide, like the consent decrees and MOAs, uses the term used by the specific agency. When discussing these systems generally, however, this guide uses the term “early intervention” exclusively. As Samuel Walker suggests, the term “early intervention” better conveys the nondisciplinary and corrective characteristics of these systems while the term “early warning” has connotations that appear more ominous to police personnel.⁵ An early intervention process based on objective screening and careful supervisory assessment followed by intervention strategies chosen to meet the specific needs of an individual officer is consistent with a management philosophy that advocates professional development and assistance over management based solely on compliance and punishment.

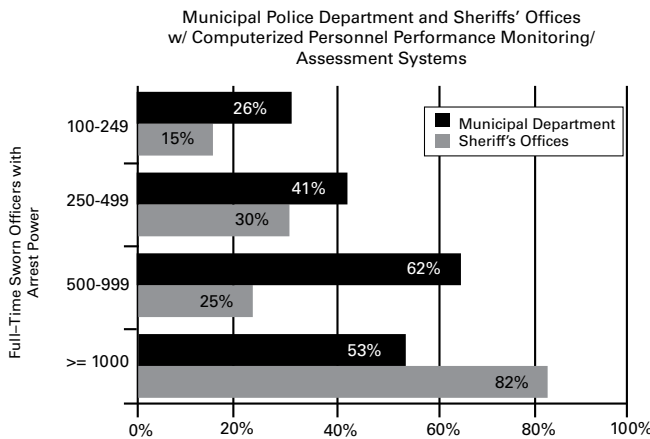
Terminology can make a major difference. Relying on the term “early intervention” instead of “early warning” is a better reflection of the true aim of these systems and may help impart a less threatening image to personnel and police unions.

The Prevalence of Early Intervention

There is some difficulty in determining the prevalence of early intervention strategies in law enforcement agencies. Part of the problem is that most of the attention has been paid to discussing the front end of the system—data collection and setting thresholds—and little attention to the back end—the role of supervisors in contextually assessing indicators and determining interventions. Consequently, the assumption remains that early intervention systems are by definition computerized. A broader definition might reveal that many more departments, particularly smaller departments, are engaging in early intervention systems in their day-to-day practices without the benefits (or the need) for computerized system.

Results from the 2003 Sample Survey of Law Enforcement Agencies (LEMAS) conducted by the Bureau of Justice Statistics provide an opportunity to assess the prevalence of *computerized* early intervention systems. Only departments with 100 or more sworn personnel with arrest powers were asked about such a system.⁶ Details about LEMAS methodology and data are in the text box on page 31 in Chapter 2.

LEMAS results revealed that 32 percent of municipal departments and 22 percent of sheriffs' offices of that size reported having computerized early intervention systems in 2003. Approximately 33 percent (16 of 48) responding state police agencies and approximately 56 percent (18 of 32) of county police agencies reporting having such a system.



The graph presented here illustrates findings across municipal police departments and sheriffs' offices by agency size. Among municipal police departments and sheriffs' offices, the likelihood of an agency having a computerized early intervention system generally increased with size. Except for the largest category, early intervention systems are more common in municipal departments than in sheriffs' office of similar size.⁷

The Benefits of Early Intervention

When properly implemented and managed, early intervention offers numerous benefits to law enforcement agencies. The benefits associated with early intervention include the following:

- Enhancing police integrity
- Promoting a culture of accountability and reconciling the ideals of internal and external accountability
- Emphasizing the department's commitment to ethical policing
- Decreasing reliance on negative sanctions and punitive actions

- Providing supportive intervention to sustain, revive, and advance individual careers
- Supporting and increasing efficiency of first-line supervisors
- Promoting clearer and more consistent communication between supervisors and subordinates across the organization
- Improving staff retention, thereby limiting the costs associated with staff turnover and lost investments in recruitment and training
- Increasing overall management efficiency
- Improving officer morale
- Decreasing liability and costs of civil suits associated with misconduct and use of force
- Enhancing community relations, particularly when community generated data are made part of the early intervention system
- Reinforcing problem-oriented policing (POP) approaches for both internal and external problems
- Underscoring the department's commitment to information and data-driven management strategies.

Core Principles of Early Intervention

Although early intervention systems vary in scope and complexity according to agencies' size, mission, and management priorities, three core principles are critical to successful early intervention.

1. Effective early intervention identifies potentially problematic behaviors in individual officers rather than identifying and removing problematic officers.

Successful early intervention proactively identifies and addresses precursors to misconduct rather than imposing sanctions for actual misconduct. As the expression "early intervention" implies, these systems seek to recognize potentially problematic behaviors early on, when nondisciplinary, corrective actions will have the greatest likelihood for success. When early intervention systems indicate a need for intervention, these systems seek to problem-solve with the goals of redirecting and enhancing an officer's performance, rather than isolating or ostracizing that individual for the purposes of discipline or termination.

The Gladstone (Missouri) Department of Public Safety emphasizes the necessity for identifying problematic behaviors early on in order to ensure a problem-oriented versus a person-oriented approach in its description of the "Personal Early Warning System":

The Personnel Early Warning System [is] a time-sensitive system effectively designed to organize critical performance and evaluation data in a format conducive to promptly identify early indicators of certain performance and/or stress related problems and to facilitate any necessary or appropriate follow-up activities.

Source: Gladstone (Missouri) Department of Public Safety's Policy Manual
Agency Profile: Population 23,246; Officers 42

Through such an approach, early intervention not only assists individual officers, but also benefits an entire agency by sending the message that positive reinforcement, professional development, and education are favored over negative sanctions. To send this message unequivocally, management must emphasize and ensure that early intervention focuses on detecting problematic *behaviors* in officers rather than identifying, labeling, and weeding-out problematic *officers*. This latter task should remain the function of the disciplinary system, which ideally would be used as a last resort only if early intervention fails.

2. Effective early intervention depends on the collection of relevant data and the use of that data in decision making.

Many law enforcement departments have embraced data-driven strategies—including problem-solving and CompStat-style management—to fight crime and maintain public order. Early intervention is predicated on the same commitment to data-driven management. Prudent police managers recognize the power of data-driven management practices in improving public safety. They are now recognizing that these same strategies can be focused inward to improve personnel performance and integrity and to manage risk.

While it is critical that departments demonstrate a commitment to the collection of relevant data and the use of that data in decision-making processes, early intervention systems do not require sophisticated information technology systems. Small and medium-sized departments can achieve the same objectives as larger, more technologically advanced agencies by relying on consistent and comprehensive record-keeping practices. The federal MOA between the Department of Justice and the Villa Rica (Georgia) Police Department indicates that early intervention can succeed even when a computerized database is not used:

The VRPD [Villa Rica Police Department] shall develop a formal system to monitor officer conduct. This system shall include information on investigations, complaints (including civil lawsuits), uses of force, training histories, supervisory reviews, and disciplinary and other corrective actions. The VRPD's system *need not be computerized*, but shall contain triggers set to detect behavior which raises concerns and requires supervisory review. The VRPD shall require supervisors to review the data regarding officers under their command on a regular basis, and should establish guidelines regarding the specific events that require additional supervisory review and consideration of corrective action.⁸ (Emphasis added.)

While early intervention can succeed with or without sophisticated computerized systems, technology does provide the benefit of allowing supervisors to access large volumes of organized data by automating certain processes. For example, supervisors' direct observations of and interactions with officers may be augmented by reference to an early intervention database. In addition, department personnel may set specific criteria by which the database automatically indicates an individual officer as exhibiting potentially problematic behavior.

3. Effective early intervention requires strong and effective supervisory review.

Early intervention succeeds as thoughtful and thorough supervisors make appropriate use of the data at their command. Early intervention systems are only a tool, not a substitute, for strong and effective supervisors. The critical importance of supervision to successful early intervention efforts is emphasized in many department policies as well as in federal consent decrees and MOAs. The Rock Hill (South Carolina) Police Department explicitly identifies supervisors' responsibilities within its Personnel Early Warning System:

1. First and second level supervisors will familiarize themselves with their subordinates and routinely observe their demeanor, appearance, and conduct.
2. Supervisors will remain alert for indications of behavioral changes or stressors that may affect a Department member's performance.
3. When supervisors perceive or determine that a Department member has problems or is causing problems, they will assess the situation and take appropriate action in accordance with this general order and the other policies and procedures of the Department, including referral to the City Employee Assistance Program or a police chaplain, informal counseling by a supervisor, and other remedial action.

Source: Rock Hill (South Carolina) Police Department General Orders Manual
Agency Profile: Population 50,000; Officers 107

Under the consent decree of the Detroit Police Department, the department is required to develop a "Review Protocol" for commanders and supervisors using the department's Risk Management System. The consent decree requires that commanders and supervisors "promptly review records of all officers recently transferred to their sections and units" and further stipulates that commanders and supervisors "be evaluated on their ability to use the risk management system."⁹

Law enforcement executives can increase the likelihood that these systems will be effective and accepted if they ensure that early intervention occurs in a preventive, timely, and problem-oriented (versus reactive) manner that it is data-driven and is seen as a tool (rather than a substitute) for good supervision.

Basic Components of Early Intervention Systems

The fact that the scope and complexity of early intervention systems and their associated administrative features vary widely by agency and the fact that these systems are constantly evolving make a thorough review of early intervention systems challenging. Nevertheless, the basic components of these systems are identifiable. These components receive detailed discussion in the early intervention policies of individual police departments, the language of the consent decrees and MOAs, and the professional and academic literature describing these systems.

The following discussion presents the basic components of early intervention systems and provides an overview of these components as documented by agencies and in the language of consent decrees and MOAs.

Indicators: The Foundation of Early Interventions Systems

Early intervention systems are built on a foundation of performance indicators that are believed to be indicative of potentially problematic behavior. While early intervention systems vary widely because of the number and scope of performance indicators used, the most commonly included indicators are citizen complaints, use-of-force reports, and firearm discharges. Although performance indicators are the foundation of early intervention systems, very little assessment of the relative strengths and weaknesses of the various indicators in predicting risk have occurred. To date, there is little standardization of which indicators should be used, but there is growing interests among agencies to share experiences as the use of these systems continues to evolve.

As early intervention systems become more prevalent and more sophisticated, the number of indicators is growing. Today, early intervention systems commonly include incidents of resisting arrest, instances of civil litigation, vehicle pursuits, accidents/vehicle damage, sick days, and secondary employment as performance indicators. Some early intervention systems are even incorporating more particularized indicators to predict risk. For instance, while many departments simply specify use-of-force incidents as an indicator, others count only use-of-force incidents that exceed a certain level of force or consider use-of-force ratios that statistically account for variations in arrest activity. Similarly, while many departments merely tabulate sick days and then assess them against fixed-threshold or department-wide standards, others specifically flag sick days that are contiguous to vacations or holidays for greater scrutiny.

The following text box lists the performance indicators used in the Phoenix Police Department's Personnel Assessment System (PAS) and the Pittsburgh Police Bureau's Performance Assessment Review System (PARS). The performance indicators used in these systems are among the most comprehensive in the nation. Both systems can be used to identify officers exhibiting behaviors indicative of risk. Both systems can also be used to identify officers who are exemplary performers because their performance indicators include commendations and citizen compliments. Finally, it is important to note that, for both systems, many of these performance indicators are not indicators per se, but sources of information that are used for contextual reference. For instance, both the Phoenix and Pittsburgh systems track arrests as an indicator although a mere count of arrests is not indicative of any risk. Rather, the number of arrests can be used to put other indicators in context (e.g., use-of-force ratios relative to activity such as arrests, field interrogations, or citations).

Indicators Tracked by the Phoenix Police Department's PAS¹⁰

- Assignment history
- Discipline
- Employee use of force
- Firearms qualification data
- Suspect use of force
- All O.T. worked and % paid & held
- All citizens, supervisory, & PSB employee requested notes
- Complaints
- Police accidents
- Refer to driving analysis
- Interrogations
- Significant event radio codes from CAD
- Industrial Injuries
- Use-of-force ratios
- Industrial exposures
- Department reports
- Training records
- Employee summary report
- Leave time history & balances
- PAS contact information
- Police Shootings
- Employee photo
- Work-hour summary
- Threshold summary report
- Arrests
- Employee assistance options
- Discretionary arrest codes
- Peer support
- Citations, traffic & criminal
- Critical Incident Stress Team
- Pursuits
- Chaplains
- Internal audits
- Mental health professionals
- Off-duty work data
- 24/7 crisis lines
- Commendations, awards, & letters of appreciation

Indicators Tracked by the Pittsburgh Police Bureau's PARS¹¹

- Accidents
- Arrests
- Counseling
- Civil claims
- Complaints
- Criminal investigations
- Discipline
- Lawsuits
- Missed court dates
- Traffic stops
- Weapons discharge
- Search and seizure
- Use of force
- Sick time
- Other absences (e.g., suspensions)
- Grievances
- Secondary employment
- Injuries
- Citations, traffic and criminal
- Pursuits
- Off-duty work data
- Discretionary arrest codes (false information, escape, resisting arrest, disorderly conduct, no identification)

When departments rely on more comprehensive performance indicators, their ability to predict risk and identify exemplary performers may be enhanced, but there may also be an increased tendency for individual officers to be indicated as exhibiting potentially problematic behavior. As these data-driven systems expand, it is increasingly imperative to ensure strong and effective supervision. The existence of “indicated” behavior does not necessarily mean that potentially problematic behavior exists. Managers and supervisors must not fall into the trap of assuming that a complicated risk-indicator system, based on a sophisticated statistical algorithm, represents a magic formula that automatically and precisely determines risk. Both the Phoenix Police Department’s PAS and the Pittsburgh Police Bureau’s PARS rely on standardized statistical reports that are regularly reviewed by supervisors, but that also allow for ad hoc reporting and analysis. The need for the careful review of performance indicators by experienced and well-trained supervisors who assess information within the context of the precipitating event and the individual officer’s career cannot be overstated.

Acting on Indicators: The Workings of Early Intervention Systems

Having established a foundation of performance indicators, early intervention systems succeed as supervisors respond to indications that officers may benefit from intervention. This process generally occurs in four steps. First, early intervention identifies officers who may require intervention. Second, early intervention requires a mandatory supervisory review to determine if intervention should occur. Third, early intervention requires supervisors to identify and implement the most appropriate form of intervention. Fourth, early intervention recommends post-intervention monitoring. Drawing, again, on consent decrees, MOAs, successful early intervention systems, and professional literature, the following discussion reviews the means by which various early intervention systems accomplish these steps.

Step One: Identifying Officers Who May Require Intervention

The first step for successful early intervention is to identify officers who may require intervention. Standard management practices across all agencies should ensure that supervisors remain continually aware of officers’ behavior. Frequent—ideally daily—contact and periodic reviews of officer performance on a systematic basis should enable superiors to identify and direct increased attention to officers who are exhibiting potentially problematic behaviors or whose behavior does not appear to comply with agency expectations or standards maintained by their peers.

Early intervention offers the added advantage of augmenting supervisors’ direct interactions and observations based on reference to an objective set of performance indicators. An individual department typically will organize these performance indicators according to a specified threshold. Whenever officers’ behaviors reach this department-established threshold, supervisors review their records and assess officer performance to determine whether intervention is appropriate. A variety of thresholds are currently in use. For example, a threshold may be reached once a certain number of indicators—such as use-of-force incidents—occur over a certain period, such as 3 months. Other methods of using statistical thresholds may involve calculations that are more complex. This section will review the most prevalent types of early intervention thresholds.

Fixed Threshold Alerts

Fixed thresholds are the most straightforward. Fixed thresholds are reached whenever a certain number of indicators occur over a specified period. Below is a hypothetical version of text adapted from several early intervention system policy directives (which have since been updated).

Early Intervention System Criteria

Officers will be targeted for review by the early Intervention system if he or she is found to have an accumulated total of *four incidents* from the following categories *within a 6-month period* the officer's name will be placed on the early warning system review list for attention.

1. Vehicle pursuits initiated by officer.
2. Preventable vehicle accidents.
3. Uses of force determined NOT to be in compliance.
4. Citizen complaints filed.
5. Any instance of department discipline.

Most departments that implement these thresholds require that officers who meet a fixed threshold receive required mandatory supervisory review to determine if intervention is warranted.¹²

Point System Threshold Alerts

Compared to fixed thresholds, point system thresholds are a slightly more complex method of triggering mandatory supervisory review. In point systems, different performance indicators are given different point values. Officers are indicated for review when they reach a certain number of points within a specified period. The Greenville (South Carolina) Police Department uses a point system for specific performance indicators in its Personnel Early Warning System, as follows:

Complaint = 2 points
Disciplinary action = 2 points
Use of force = 1 point
Vehicle pursuit = 1 point
Vehicle collision = 1 point

Source: Greenville (South Carolina) Police Department's policy manual
Profile: Population 56,000; Officers 184

Department thresholds are reached if an officer receives six points in a 3-month period or 20 points in a year.

Peer-Based Threshold Alerts

Peer-based thresholds acknowledge the reality that different officers are more or less likely to reach a fixed threshold or a point system threshold given their assignment. Officers working on a specialized gang or drug unit or in a high-crime district, for instance, are more likely to be the subjects of citizen complaints or experience more situations where use of force is warranted. Accordingly, peer-based thresholds are adjusted to acknowledge the risk inherent in officers' various assignments. Officers who are being assessed relative to a peer-based threshold, for instance, may be indicated if they are one standard deviation above the mean of their peers for specified performance indicators. Peers are defined by a variety of criteria. For example, an officer's peers may be defined as those working the same zone and same shift. As a result, these thresholds adjust for different risk levels associated with different assignments.

The Pittsburgh Police Bureau pioneered the use of early intervention peer-based thresholds when developing its *Performance Assessment and Review System* in response to the 1997 consent decree with the Department of Justice. In developing this peer-based threshold, Pittsburgh actually went well beyond the scope of requirements specified in the consent decree. Today, that system is a model for other departments, including many under federal consent decrees and MOAs. A Prince George's County (Maryland) Police Department *Consent Decree Status Report* specifically credits Pittsburgh's system as exerting a major influence over its system.¹³

Single-Event Threshold Alerts

As various thresholds become increasingly sophisticated, many departments still recognize that certain incidents should automatically indicate an officer for review. A mandatory supervisory review is in order whenever a death, whether of a suspect, bystander, or fellow officer, results from the actions of a police officer or whenever an officer uses force defined as deadly. The implication of such a review is not that the officer's behavior was necessarily problematic. Instead, a review is performed in recognition of the fact that deaths, injuries, or shootings that result from officers' actions are traumatic experiences for which counseling or other forms of intervention may be advisable.

Alerts not Based on Automated Threshold

The use of thresholds, which provide crucial alerts for mandatory supervisory review, is a key feature of early intervention systems. Departments that use early intervention, however, quickly recognize that intervention sometimes may be warranted before a threshold is reached. Supervisors should act when they observe signs of potential problems rather than waiting for a problem to manifest itself in statistically indicated behavior. Supervisors may be aware of stresses in officers' personal lives such as marital discord, illness, or problems with children. Supervisors may observe sudden changes in personality, such as when a normally quiet and reserved officer suddenly seeks out attention or when an outspoken officer appears unusually quiet. Such behavioral cues should be heeded as signs of problems that may affect an officer's performance or judgment on the job. These may be signs that the officer might later "act out," on or off the job, in career-ending ways. Department thresholds—no matter how extensive or nuanced—will not always alert supervisors to the myriad problems that officers may experience. Alert, conscientious, and diligent supervisors are the critical component in even the most technologically sophisticated early intervention strategy.

In the experience of the Phoenix (Arizona) Police Department, nonthreshold alerts have come from supervisors, peers, family members, and officers themselves. Supervisors in Phoenix see this as an encouraging trend suggesting that officers and their families recognize the Phoenix Police Department's PAS as a genuine effort to assist employees.¹⁴

Benefits of Timely Indicators

Early intervention can be most effective if it is administered in a timely manner. Thus, it deserves note that computerized early intervention systems can offer the additional advantage of generating an automatic notification whenever an officer has crossed a department-defined threshold. The sooner supervisors learn of potentially problematic behavior, the sooner they can review this behavior and take steps, if necessary, to prevent escalation. In many manual and some automated systems, agencies tabulate performance indicator data on a quarterly basis. This standard compromises the timeliness of early intervention efforts. Data recorded and reviewed in real time is the most useful. Departments with fully automated systems may alert supervisors as soon as an officer crosses a threshold. These automated alerts may take the form of briefing reports submitted to appropriate supervisors or automated e-mail notifications.

Step Two: Mandatory Supervisor Review for Indicated Officers

Once an early intervention system "indicates" an individual officer, most departments require a mandatory supervisory review to determine whether the indicated officer is, indeed, in need of intervention.

It is important to emphasize again that supervisors are making a critical decision at this point. The fact that an officer is indicated does *not* automatically mean that he or she is in need of intervention. While early intervention systems are an effective tool to indicate officers in need of intervention, legitimate police activity can and does indicate officers who do not require intervention. Indicated officers should not be projected in a prejudicial or negative light. Instead, supervisors must remember that indication is the first step in a multistep process and is not in itself determinative of the need for intervention. Supervisors must play the critical role in determining whether intervention is warranted.

Understandably, supervisors may prefer to err on the side of caution. Early intervention exists to identify and address potentially problematic behavior before escalation. Departments, however, must rely on a supervisor's experience and insight in determining if, in fact, there is need for intervention. Being indicated does not mean that intervention is imminent. Indeed, in certain circumstances, the decision not to intervene may be the appropriate decision.

While the review requirement is almost universal, there are no widely established criteria or precise protocols for performing this review. There should be absolute consensus, however, that supervisors play *the* critical role in the decision process. The computerized alert is simply a tool.

Text from the Colorado Springs (Colorado) Police Department manual suggests the breadth of information and experience on which supervisors will need to draw:

The analysis of the facts should include consideration of the totality of circumstances surrounding each incident and/or complaint, drawing on knowledge of human behavior, department policies and procedures, and the insight of the involved supervisors and managers.

Source: Colorado Springs (Colorado) Police Department manual
Agency Profile: Population 315,000; Officers 501

Indeed, supervisors' experience, training, and direct working knowledge of their officers at this stage of the process are especially critical. By considering the context in which the indicating events occurred, supervisors are best able to use their personal knowledge of the officer and his or her professional judgment of the officer's behavior to determine whether intervention is required. Department policies should identify factors that reviewing supervisors should consider in their decision regarding intervention. The following discussion investigates these factors.

Supervisors should ascertain whether the indicating events reflect a pattern or an isolated incident or incidents. Behaviors that reflect a pattern may require intervention where isolated incidents may not. For instance, an officer may have been indicated because of four citizen complaints within a 1-week period. Upon assessment, the supervisor may determine that all the complaints were generated by members of a family alleging that the officer was rude to a specific person in the family, a person that the officer lawfully arrested. Noting that the officer has never had a citizen complaint for rudeness or for any other reason in his 5-year career, the supervisor may decide that no intervention is needed even though the indicator threshold was met.

Supervisors should determine whether there are links between the indicating events. Similar events may be indicative of underlying problems. A string of complaints in which an officer is alleged to have been using foul and discourteous language, may be related to personal problems the officer is experiencing. Seemingly dissimilar indicators may also have a common link. For instance, a supervisor may need to determine whether an inordinate use of sick days or missed court dates are related to an officer's secondary employment.

Supervisors should consider the full context in which indicating events occur. In supervisors' efforts to assess an officer's behavior and performance, context is critical. Supervisors should always seek to determine if there are factors, including factors outside the department, contributing to an officer's behavior. For instance, an officer may be experiencing marital problems, a death in the family, or problems with children that influence work performance. Understanding the critical factors, both on and off the job, will help supervisors decide when to intervene and to tailor needed interventions to individual officers' needs.

Supervisors should ascertain whether deficiencies in policies or training might have contributed to indicating events. In a thorough assessment of indicating events, a supervisor may determine that unclear policies or inadequate training contributed, in part or in whole, to the problem. Police work is remarkably complex; policies and training cannot anticipate every situation. If novel situations expose problems with existing policies or training, supervisors should respond by providing feedback to appropriate department personnel. If either unclear policies or inadequate training is a major contributing factor in indicating an officer, the supervisor may well decide that no intervention for that officer is needed.

Supervisors should determine what, if anything, should or could have been done differently to prevent the indicating events. Supervisors may prevent unfortunate events in the future by fully understanding how officers might have acted differently in the past. For instance, if an officer is indicated for crossing a use-of-force threshold or a single event threshold for excessive use of force, the supervisor should review how these situations might have been handled differently. If intervention is needed, discussing different ways of handling the situations may become an important part of that intervention.

Supervisors should document their reviews of indicated officers. Just as there are no widely established criteria or precise protocols for performing mandatory supervisory reviews, there are no hard and fast guidelines governing the documentation of these reviews. Some departments require formal written reports in which supervisors are required to respond with highly specific detail. Other departments are much less formal. Departments should determine what purposes the required documentation of reviews would serve. The requirements for the highly detailed, formally written reports used in the Early Intervention Program at the Colorado Springs Police Department follow:

The report of the [Early Intervention Program] analysis will include a brief summary of the facts of each incident and/or complaint that qualified the employee for the EIP. This report should include the findings and conclusions based on the supervisor's analysis, as well as a recommended assistance. Suggested assistance may include, but is not limited to:

1. Assessment that no problem behavior exists.
2. Need for remediation or training.
3. Referral to the department psychologist for counseling or further referral to Employee Assistance Program [EAP].
4. Peer training/assistance.
5. Change of working environment.
6. Documentation of an approved performance plan.

This performance plan will be designed to assess further and correct any identified performance concerns, and may include any or all of the above corrective measures. This performance plan may include progressive discipline for any failure to meet the stated requirements. In reference to use of force incidents, supervisors should address the following when documenting their review of the initial investigation:

1. Supervisor notification.
2. Photos taken of the suspect.
3. Detailed description of the suspect's actions.
4. Detailed description of the employee's actions.

5. Documentation of all employees involved.
6. Listing of all officers and witnesses present.
7. City of Colorado Springs listed as the victim in all resisting, interference, and obstructing cases.
8. Employee listed as the victim in all Assaults on a Peace Officer cases.
9. Statement of when/if resistance stops.
10. The employee's job assignment(s) during the reporting period.
11. The employee's Internal Affairs and Staff Resources Section records.
12. The number of arrests made during the reporting period.
13. Any other information or statistics that may be pertinent.

Final Review of EIP Analysis Report

The report, with the recommended assistance, will be completed by the officer's supervisor and presented to the involved Lieutenant. The Lieutenant will review the recommendation and provide any necessary insight and/or recommendation(s). The Division Commander will then review the summaries and provide any necessary insight and/or recommendation(s). The Division Commander will make the final decision on any recommended action as a result of an EIP Analysis Report. The original EIP Analysis Report will be delivered and maintained by the Office of Professional Standards, Internal Affairs Section, and a copy placed in the employee's EIP file. The completed EIP Analysis Report will be delivered to the Internal Affairs Section within thirty days of the initial notification that an employee has qualified for the EIP. The Division Commander of the affected employee will ensure that:

1. The employee is fully informed of the findings and disposition of this analysis.
2. All final recommendations are fully implemented.
3. A copy of this analysis may be retained in the employee's evaluation file.

Source: Colorado Springs Police Department Manual
Agency Profile: Population 315,000; Officers 501

Step Three: Selecting and Implementing Appropriate Intervention

When supervisors determine that intervention is warranted, they are given considerable leeway in deciding what form that intervention should take. Intervention ranges from the very informal, such as a discussion of the indicating event with a supervisor, to the more formal, such as a referral to psychological counseling, stress management, or substance abuse programs through a department's employee assistance program (EAP). The most common intervention options available for officers include the following:

- Training/retraining in specific problem area
- Transfer/reassignment
- Counseling
 - By supervisors
 - By peers
 - By mental health professional
- Alcohol/substance abuse counseling
- Referral to EAP.

While intervention options may vary from department to department, all interventions should share two characteristics. First, interventions should be designed to assist the officer in correcting the problem. Intervention must be undertaken with the goal of creating a response that will benefit the officer, the department, and the community in a proactive, not punitive, way. Second, interventions should be tailored to the needs of the individual. In contrast to the disciplinary process, early intervention is not intended to be a quid pro quo system. Two officers indicated for similar events (e.g., an inordinate number of use-of-force incidents when compared with their peers) may be experiencing different underlying problems. While retraining may be an appropriate intervention for one, the other may require retraining and counseling. Supervisors should expect that interventions could vary widely.

Step Four: Post-Intervention Monitoring

Precise protocols for post-intervention monitoring are as uncommon as they are for intervention itself. In this step, supervisors benefit from flexibility and informality as they monitor their officers. As with intervention, the success of post-intervention monitoring depends on the experience and skill of supervisors who may tailor their monitoring to the needs of the individual officer. During post-intervention monitoring, the supervisor's efforts should focus on the officer. For instance, if an officer is indicated because of three use-of-force incidents in a year, any subsequent use-of-force incident should be reviewed thoroughly. Increased supervision, including random roll-bys to observe the officer's performance in the field may also be warranted.

In addition to monitoring individual officers, supervisors must monitor their own success in managing early intervention efforts alongside disciplinary procedures and in sustaining the viability of the early intervention system in the minds of their officers.

Supervisors should clearly understand the difference between early intervention strategies and disciplinary strategies and distinguish between the two. Supervisors should also expect monitoring of these efforts by their superiors. Early intervention is meant to identify and address problematic behavior at its first appearance rather than waiting until disciplinary action is required. Wisely and increasingly, police executives are adopting early intervention

strategies because of their preventive benefits. Early intervention can ensure that officers are not punished for effective, active, and appropriately aggressive policing. It can also ensure that disciplinary action remains a tool of last resort. Still, early intervention does not supplant the appropriate use of discipline. Departments' policies must remain clear in recognizing that some behaviors require discipline and are best handled through the standard disciplinary process.

Departments using early intervention alongside their traditional disciplinary system are likely to see disciplinary proceedings take place for at least two reasons. First, disciplinary systems remain necessary in cases of alleged official misconduct and in instances when officers allegedly violate criminal law. This is the case in departments with or without early intervention. Second, disciplinary systems are necessary in cases in which early intervention was attempted but unsuccessful because an officer refused or was unable to comply. Ideally, the effective use of early intervention strategies will result in a corresponding decrease in disciplinary measures.

Police executives are ultimately responsible for ensuring that their departments achieve the proper balance between early intervention and traditional disciplinary protocols. The discretion granted to first-line supervisors under early intervention strategies is critical. It necessitates a heightened level of review by command staff to guard against misapplication, either intentional or unintentional. Supervisory decisions should be reviewed frequently and systematically by the chain of command to ensure that early intervention is not used in cases where discipline is mandated by a department's policies. Review procedures should also guard against the opposite: instances in which disciplinary procedures are used where early intervention is more appropriate.

Supervisors should monitor their efforts to preserve the credibility of early intervention.

Although it is now common practice for a department to keep early intervention strategies conceptually and operationally distinct from its disciplinary system, this does not obviate the need for employee safeguards when implementing early intervention. In keeping with ethical and professional personnel management practices, many departments adhere to standards of confidentiality and policies that promote employee access. Not only are these standards ethical, but they also can contribute to officers' confidence in early intervention.

Maintaining Confidentiality

Departments commonly specify that early intervention data files, whether electronic or manual, be held in confidence. Data is shared only with immediate supervisors and the chain of command directly involved in decisions regarding intervention. Supervisors should only be permitted to view data regarding officers serving beneath them in the chain of command. When formal reports or memorandums are issued as a result of supervisory review, departments generally treat these documents as confidential. The chief, however, may exercise discretion and make reports or memorandums available to appropriate supervisors for further review or when it serves the interests of the department.

Allowing Employee Access

Increasingly, departments also specify that officers' early intervention data be accessible to them. Accessibility offers several benefits. First, open access policies increase the transparency of the system and underscore the message that early intervention exists to assist

employees. Second, open access offers officers the opportunity to challenge or amend critical information used in early intervention, thereby providing an additional layer of checks and balances. Access may be given to both individuals who have been indicated and those who have not. The latter individuals may simply wish to know how close they are in coming to a threshold in order to take self-directed action to avoid being indicated.

Integration of Early Intervention Systems into Comprehensive Personnel Assessment Systems

Increasingly, law enforcement agencies are turning to personnel assessment or risk-management systems instead of more narrowly focused early intervention systems. These more comprehensive systems typically contain the elements of early intervention systems, but provide other personnel management functions as well. These systems track officer performance data (e.g., responses to calls for service, arrests, and citations issues) including indicators of positive, neutral, and negative connotation. Through standardized report procedures and ad hoc queries, such systems yield consistent and reliable measures of performance. Increasingly, departments are using these systems to inform and support a wide range of personnel issues. Many departments routinely and systematically will assess performance indicators anytime an officer is transferred, promoted, or reassigned. Such indicators can be of invaluable assistance to supervisors when they receive transferred officers. Also, broadly focused personnel assessment systems can be useful tools for annual performance assessments and promotional decisions. The fact that these systems are broad enough to capture positive, neutral, and negative data means that these systems are more likely to be accepted by rank-and-file officers. The fact that they are now often used to manage both sworn and nonsworn personnel may contribute to a sense that the system is more evenly applied and inherently fairer.

The Challenges of Complex Personnel Management Systems: Dealing with Data

The growth of early intervention systems and the development of more comprehensive personnel management systems require departments to manage increasing amounts of data. Fortunately, the need for effective data management parallels a greater reliance on data-driven strategies in policing generally. Data technology throughout law enforcement is increasingly comprehensive and sophisticated. More and more agencies are developing enterprisewide or gateway data solutions that make them more efficient in data-collection efforts while avoiding needless duplication.

In simple terms, a gateway data system draws information from discrete data systems in ways that are transparent to the user. For instance, rather than storing all indicator data on a database system dedicated exclusively to early intervention, a gateway system pulls relevant data from systems designed for other purposes. For instance, an early intervention system that tracks sick days and use-of-force incidents may rely on a gateway system that pulls sick day information from a centralized city database that keeps track of city employee timesheets and use-of-force data from a police department database maintained on an internal server.

This same early intervention system may also pull data from the agency's records management system to determine the ratio of use-of-force incidents to felony arrests for a particular officer.

Consistent with this data integration approach, many departments treat their early intervention data as part of their broader data-collection system. For instance, the Pittsburgh Bureau of Police and the Phoenix Police Department both rely on gateway data systems for their early intervention efforts.

Identifying Exemplary Performers

Departments that capture positive, neutral, and negative data in their early intervention or personnel assessment systems have begun to rely on these indicators not only to identify officers in possible need of intervention, but also to identify exemplary performers.

Recognizing and rewarding officers for exemplary performance can serve as an incentive for others, provide opportunities for peer mentoring, and reinforce the message that early intervention truly assists officers. The Pittsburgh Bureau of Police relies on PARS to assess which officers are worthy of promotions as well as to decide whether to accommodate officer-initiated requests for duty transfers or outside training. For instance, if a patrol officer requests a transfer to the traffic division, PARS can be queried to determine whether that officer made traffic stops a priority as a patrol officer and whether the officer performed satisfactorily in these duties (e.g., did the officer routinely show up in traffic court?). PARS is effectively used as part of broad personnel performance assessments.

Moving Beyond Individual Assessment

While early intervention systems and even more comprehensive personnel management systems have been advocated mainly as a tool to assess individual performance, prudent managers have realized that these systems allow analysis of entire units, entire agencies, and of individual, unit, and agency performance over time.

Unit and Agencywide Assessment

Just as early intervention and personnel management systems allow for the analysis of individual officers' behavior, these systems allow for the analysis of unit and agency activity. For instance, although precincts 1 and 2 may have similar demographics, crime problems, and land-use profiles, an early intervention or personnel management system might reveal that precinct 1 has far more citizen-generated complaints and use-of-force incidents than precinct 2. Once in possession of these facts, managers will want to determine whether these disparities require action. Is one unit managed more effectively than the other? Are there differences in staffing levels? Are the relatively high levels of complaints and use-of-force incidents in precinct 1 evenly distributed or are these levels more attributable to a particular shift or even a particular officer or group of officers? Early intervention and personnel management systems enable agencies to answer such performance questions.

Assessment over Time

Similarly, early intervention systems and personnel management systems can be used to assess trends over time. For instance, managers may use simple line charts to compare use-of-force incidents across months or quarters. Through such analysis, they may assess whether the introduction of a new technology or procedure had an impact on use-of-force incidents and whether that impact varied across units. Similarly, managers who invite citizens to file complaints or commendations over the agency's web site may rely on data from an early intervention or personnel management system to determine whether this policy change had an impact on the volume of complaints and commendations as well as whether this impact was more or less pronounced for some geographic units compared to others. Managers might even compare performance indicators across different generations of academy graduates or determine whether trends in use-of-force incidents correlate with periodic refresher courses. These managers might decide to readjust a 3-year training cycle if indicators reveal dramatic increase in incidents 2 years after training.

While early intervention systems and more comprehensive personnel management systems allow managers to address these questions effectively, they must remain vigilant in their management of data and their supervisory efforts. As with individual assessments, unit and agencywide assessments and assessments made over time must be made in context. For instance, a department that publicizes its complaint process in a series of public forums and then begins to allow community members to file complaints on the agency web site should expect a rise in complaints. Rather than perceiving an agencywide surge in complaints as a problem, the department may well point to this as an indicator of the effectiveness of its strategy. Only after such a change is in effect for some time would tracking of complaints once again become a meaningful indicator of public perception and officer performance.

Recommendations

Based on assessment of federal consent decrees and MOAs, as well as the preceding discussion, the IACP offers the following recommendations. The International Association of Chiefs of Police (IACP) reminds readers that these recommendations may require periodic revision because early intervention systems and related management strategies are evolving rapidly. The IACP also reminds readers that any department's ability to implement early intervention strategies may be affected by local laws and collective bargaining agreements.

The recommendations below correspond sequentially with the goals of creating an early intervention system, implementing the system, and promoting the system to relevant stakeholders.

1. Organize a working committee that involves a broad cross-section of participants in the planning, development, and implementation of early intervention.

Executives, managers at all levels, line officers, and administrative staff will have a vested interest in early intervention strategies. The performance of sworn and nonsworn personnel may be monitored by the early intervention system and many individuals and units will be

required to contribute data to or use the data within the early intervention system. As a result, departments planning, developing, and implementing an early intervention system should organize a broadly representative working committee. Even after the early intervention system is implemented, this working committee should remain intact to monitor the system, make necessary adjustments to the system, and assess the impact of new or revised policies on the system.

2. Involve relevant government bodies in the planning and implementation processes.

Municipal, county, and state governments have a clearly vested interest in early intervention systems that are used in their law enforcement agencies. The reputation of these government entities depends in large degree on the performance and reputation of their law agencies. Prudent government leaders will recognize the benefits that can come with meaningful early intervention strategies and will understand that an investment in early intervention strategies can reduce liability and costs in the long run. Government bodies fund these systems and stand to benefit from them. They should be involved in their planning and implementation.

3. Involve police unions, whenever possible, in the planning and development of early intervention.

Unions have a keen interest in any system that has a potential impact on their members. To date, union reaction to early intervention has been mixed. This is the result of the vast diversity of early intervention systems now in operation. Differences also exist because some departments developed early intervention systems reactively, such as under the requirement of federal consent decrees or MOAs, while other departments developed early intervention on their own initiative. At a minimum, police unions should be informed about the planning and development of early intervention. Whenever possible, union representatives should be brought into the planning and development process as active participants. Departments should emphasize the differences between an early intervention system and the disciplinary system as well as the potential benefits of early intervention to officers.

4. Inform the community about the planning and development of early intervention and involve them in planning, when appropriate.

Departments should inform community stakeholders about the development of early intervention. Departments may even choose to involve community stakeholders in the development process. Community involvement may range from a simple review to active participation in the working committee. Involvement of community stakeholders may be warranted if similar processes had already been successfully completed. For instance, if the department has successfully used community input in designing its citizen complaint process, they may invite involvement again. Departments may consider developing community surveys to determine which indicators are of most concern to the community. The survey results may help department personnel decide which indicators should be included in the system or what thresholds the department should use for various indicators.

5. Determine the scope of early intervention that is most appropriate for a department.

Early intervention requires that an agency engage in a regular review of officers' performance along a defined set of indicators. Each agency should determine the scope of the system that best serves its needs. Many smaller departments with reasonable ratios of first-line supervisors to rank-and-file officers may already engage in early intervention strategies without a formal program or model. For some of these departments, the formalization of these efforts into policies or directives may be all that is needed. Many larger departments, however, may realize that their early intervention should be developed as part of a more comprehensive and automated personnel management system that draws on existing data systems. The decision regarding the scope of early intervention should be based on the size, function, and existing data technology of the individual agency. Design of early intervention systems should take advantage of what similar agencies have already experienced.

6. Involve information technology (IT) staff, data systems operators, and end users of existing data systems in the planning, development, and implementation of early intervention.

Any early intervention system that involves computerized data must involve representatives from the IT staff, data systems operators, and end users of existing data systems that may feed into the early intervention system. Whether designing a dedicated early intervention data system or deploying a gateway system that draws from a variety of existing data systems, IT staff will need to create appropriate query and report capabilities that meet end users' needs. End users of other data systems (e.g., the records management system or the personnel system) will be able to provide critical input on the quality of that data and can help assess whether existing data collection practices will be sufficient for the early intervention system. Data input operators can provide critical information about current data quality issues, particularly as they relate to paper forms generated in the field.

The development of early intervention is likely to occur while improvements are being made in data management systems. IT staff and data systems operators will be critical in considering compatibility issues as they update computer-aided dispatch systems, web sites, records management system, and other data systems.

7. Carefully assess other agencies' early intervention systems and experiences.

Although there is no such thing as one-size-fits-all early intervention, there is no reason that a department should start from scratch when designing its early intervention system. Agencies that have developed large-scale early intervention systems have charted new territory in policy, data system design, data management, and changes to supervisory practices. Managers should learn from the challenges that had been faced by peers in other departments rather than learning through trial and error.

Departments, regardless of size or function, should familiarize themselves with model early intervention systems. These include the following:

- Pittsburgh Bureau of Police—Performance Assessment Review System, www.city.pittsburgh.pa.us/police
- Miami-Dade Police Department—Employee Identification System, formerly Employee Profile System, www.mdpc.com
- Los Angeles Sheriffs' Department—Personnel Performance Index, www.lasd.org
- Phoenix Police Department—Personnel Assessment System, www.phoenix.gov/police/pas.html
- Charlotte-Mecklenburg Police Department—Early Intervention System, www.charmeck.org/Departments/Police/Services+A-Z/Home.htm (select “directives” then select “300-018 Performance Review and Development.PDF”).

Departments should also use other agencies' web sites as well as published material to explore the variety of systems in operation. Departments may solicit input from colleagues across the nation through IACNet or web-based list-serves. At a minimum, departments should consider what early intervention systems are in use in neighboring jurisdictions.

Although departments tend to borrow best practices from early intervention systems in other departments, they seldom adopt other systems in their entirety. Early intervention systems generally rely on indicators driven by local supervisory practices that vary across departments. As a result, few commercial off-the-shelf (COTS) systems are available. While it is doubtful that any department could simply use another department's early intervention database, there may be portions of a software program that could be modified to meet the needs of another department. In such an instance, the agency's IT staff or qualified software development consultants should play a role. Any consideration of standard software, including COTS software, should carefully assess the extent to which that system conforms to the agency's data collection efforts and the extent to which the software can be customized to meet the agency's particular needs.

8. Ensure that supervisors have the appropriate experiences, skills, and training to perform their early intervention responsibilities.

Supervisors must be qualified to perform their early intervention responsibilities. In departments with a strong history of close supervision and ongoing feedback, the need for additional training for supervisors may be negligible. If these are not in place, however, considerable support and training of supervisory personnel may be warranted. Depending on the complexity and sophistication of the early intervention system, supervisors may require training in collecting data, querying the system, assessing early-indicator data in context, writing reports to document decision-making processes, and intervention, intervening, and follow-up monitoring. Departments planning and implementing an early intervention strategy should be aware that it might warrant reassessment of the way supervisory personnel are selected, trained, and evaluated.

9. Ensure that early performance indicators are well-established, clearly understood, and fair.

Using performance indicators that are not collected consistently and reliably can be counterproductive and may compromise early intervention system efficacy and fairness. This is a particular area of concern for highly discretionary police actions. For instance, some early intervention systems use field interviews (sometimes called field interrogations) as an early intervention system indicator. Use of indicators such as these would be advisable only if there was a consistent definition of the term and only if supervisors are assured that all officers consistently fill out these forms. If officers conduct field interviews but can avoid recording them so they can fly under the radar screen, it compromises both the fairness and utility of the early intervention system

10. Ensure that early intervention data are collected and entered in a timely manner.

In addition to being reliable, early intervention data must be timely if the system is to identify potentially problematic behavior and intervene as needed. Implementing an early intervention system may require an agency to commit resources for timely data collection and entry as well as take measures to assure data quality.

11. Carefully consider how to best document supervisors' early intervention decisions and selection of interventions.

While selection of performance indicators and mechanisms for tracking indicators and setting thresholds for mandatory supervisory review have received ample attention in policing literature, far less attention has been paid to early intervention review processes and documentation of those reviews. Some departments with early intervention systems require early intervention review reports that follow a specific protocol while others are entirely silent on the issue of reports.

Departments that require periodic review using early intervention performance data (e.g., quarterly reviews) typically will require specific report formats to ensure compliance by supervisors and to ensure consistency in the review process. Recognize that these reviews should be used address exemplary behavior as well as indicate the need for intervention.

The department should consider that heavy reliance on formal protocols and stringent reporting requirements that deal only with indicators of problem performance may lead some to believe that the early intervention process is just another format of the disciplinary process. While individual departments may differ in organizational culture and the documentation processes, documentation processes should in no way compromise the benefits of a truly nonpunitive early intervention program and inhibit informal intervention options being used when appropriate.

12. Continually review and refine early intervention indicators and thresholds.

To work effectively, early intervention must respond to changing conditions within the department and community. Managers must regularly review and refine early intervention indicators and thresholds. Departments that introduce new use-of-force options may need

use-of-force thresholds. Similarly, departments that make their citizen complaint process more accessible and more transparent may need to adjust their citizen complaint thresholds.

13. Ensure that early intervention policies and practices do not conflict with other department policies and practices.

Early intervention systems and personnel management systems may be far-reaching and complex. As a result, early intervention policies and practices must be carefully reviewed to ensure that they do not conflict with other policies and practices. For instance, departments that rely on a point system to quantify their officer productivity should handle high-discretion arrests (e.g., resisting arrest or disorderly conduct without other charges) appropriately. It would be confusing and contradictory, for instance, if high-discretion arrests are treated positively for accumulating productivity points but are used as an indicator of risk in early intervention.

14. Establish the differences between early intervention and the disciplinary process through a separate written policy for early intervention systems.

To distinguish early intervention from the disciplinary system, departments should have a formal written policy. Departments may consult neighboring jurisdictions' written policies, relevant standards published at the state level, Commission on Accreditation for Law Enforcement Agencies (CALEA) standards (standard 35.1.15), or the IACP Model Policy on Early Warning Systems (volume 5, number 82).

15. Clearly articulate the differences between early intervention and the disciplinary process in day-to-day communications and operations by making early intervention an integral part of the standard supervisory process.

Departments deploying early intervention must understand and clearly articulate the differences between the two systems, both in policy and day-to-day practice. The proactive and preventive nature of early intervention should never be confused with the reactive, punitive measures of the disciplinary system. If early intervention is perceived as an extension of the disciplinary system, it will be resisted by the officers and steadfastly opposed by the union. While the disciplinary system may be administered by a special unit, often the internal affairs unit, early intervention strategies are best administered through the normal chain of command, with first-line supervisors assuming primary responsibility. Emphasizing the facts that individual officers can access the system and that data will be made available only to the officer's immediate chain of command will help to establish the differences between early intervention and the disciplinary system. It must always be recognized, however, that early intervention efforts may be used alongside disciplinary actions in certain circumstances. In cases where discipline is warranted or required as a matter of policy, individuals may still benefit from assistance provided through the early intervention process.

16. Educate rank-and-file officers about early intervention.

Early intervention is designed to promote and protect the well-being of individual officers. The introduction of early intervention to a department, however, can be challenging. The introduction of early intervention can be perceived as a change to the department's organizational culture and viewed as a threat to the status quo. Managers must educate rank-and-file officers about the purpose and workings of the early intervention system, making sure to emphasize its intent to assist officers.

17. Educate community groups and community leaders about early intervention.

When properly designed, implemented, and managed, early intervention can be an effective public relations tool and can enhance public confidence in the police. Community groups and community leaders should be educated about early intervention.

One of the most effective and economical means of educating the community is to present information about early intervention on the department web site. The web site should articulate the differences between early intervention and the disciplinary system. The web site should explain the general purposes of the early intervention system and discuss specifically how it relates to citizen-generated complaints and excessive force allegations. The web site should identify the ways in which early intervention benefits the community, the department, and the individual officer.

The Phoenix (Arizona) Police Department uses its web site to offer a comprehensive and clear introduction to its PAS. The following is an excerpt from its web page:

Early Intervention and Personnel Assessment System FAQs

The Personnel Assessment System, (PAS), is the Phoenix Police Department's Early Identification and Intervention System. PAS was originally created to make our employees more successful. It is a non-disciplinary system designed to identify possible problematic behaviors with employees, and to offer assistance using intervention options to modify those behaviors before discipline is required.

This program will also assist in reducing future police department liability using risk management programs and techniques already in place. The department also found that by using an extensive case management system within PAS, supervisor accountability is being held to a higher standard.

On January 1, 2004, the Phoenix Police Department fully implemented PAS and began to send out Intervention Reviews. Many department employees have received training, which is an ongoing process and crucial to the success of this program. PAS is available for review to all departmental employees.¹⁶

Source: Phoenix (Arizona) Police Department Manual
Agency Profile: Population 1,321,045; Officers 2,626

Conclusion

Early intervention is a management strategy, not just a technological solution. The concepts of early intervention must be seen primarily as a supervisory strategy and not as a technologically driven panacea. Early intervention strategies and technological solutions are evolving rapidly and the experiences of several agencies suggest that they have tremendous potential. They can save individual careers, help safeguard a department's investment in training and career development, help personnel get the services they need, reduce agency liability, and identify and reinforce exemplary performance. While tech-savvy agencies may benefit from sophisticated data-driven early intervention alerts, smaller agencies can benefit from incorporating similar concepts into their supervisory routines. Law enforcement executives should look to what other agencies of similar size are doing in this area and determine how those practices might be adapted to their departments.

Suggestions for Further Reading

As early intervention systems and related supervisory practice are becoming more prevalent, a growing number of publications and resources are becoming available. This is a partial list.

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- ¹ Hussey, James, Chief of Cohasset (Massachusetts) Police Department. Personal Correspondence. December 1, 2005.
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- ³ Walker, Samuel. The New World of Police Accountability. Thousand Oaks (California): Sage Publications, 2005.
- ⁴ "Interview of Samuel Walker." Best Practices Review (Publication of the Police Assessment Resources Center) October 2002: 14-17.
- ⁵ Walker, Samuel. The New World of Police Accountability. Thousand Oaks (California): Sage Publications, 2005.
- ⁶ The full text of the relevant question on the LEMAS survey is, "Does your agency have a currently operational computer-based personnel performance monitoring/assessment system (e.g., early warning or early intervention system) for monitoring or responding to officer behavior patterns before they become problematic?"
- ⁷ There is slight anomaly in this pattern for municipal departments: 52 percent (20 of 38) of the largest municipal agencies (≥ 1000 sworn officers with arrest power) responding to the survey versus 62 percent (21 of 34) of the next largest category. In addition, the 82 percent figure for the largest sheriff's office is based on a limited number of respondents. There were only 11 sheriffs' offices of that size among the respondents and nine reported having an early intervention system.
- ⁸ *United States v. City of Steubenville, Ohio* Consent Decree (09/03/97) Available on the web at www.usdoj.gov/crt/split/documents/steubensa.htm.
- ⁹ *United States of America v. City of Detroit, Michigan and the Detroit Police Department* Consent Decree (06/12/03). www.usdoj.gov/crt/split/documents/dpd/detroitpd_uofwdcd_613.pdf.
- ¹⁰ "Early Intervention and Personnel Assessment System FAQ's." Phoenix Police Department. Retrieved February 01, 2006 from www.phoenix.gov/POLICE/pas1.html.
- ¹¹ Information obtained from site visit to Pittsburgh Bureau of Police on February 22, 2005.
- ¹² Correspondence with several departments that had previously used fixed thresholds, reveal that they have replaced them with what they consider more flexible methods that rely more heavily on supervisory skills.
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IV. *Managing the Complaint* *Process*



MANAGING THE COMPLAINT PROCESS

A simple declaration that all complaints against any member of the police department will be received and investigated leaves little room for dispute. It also prevents the age-old problem of certain complaints being discounted or rejected for purely subjective reasons. It is difficult to explain to a citizen why one complaint was accepted and one rejected for basically the same offense. It puts supervisors in awkward positions when a peer has accepted a complaint that they have rejected in the past.¹

Chief Beau Thurnauer, Coventry (Massachusetts) Police Department

Introduction

An accessible, fair, and transparent complaint process is a hallmark of police responsiveness to the community and is consistent with the goals of community policing. In addition, a thorough assessment of all allegations of police misconduct—whether these allegations are initiated externally by civilians or internally by other department personnel—offers police managers an opportunity to proactively address concerns from a problem-solving perspective. Too often, the processing of complaints has been viewed simply as an adjudicative process in which complaints are investigated and in which dispositions and disciplinary sanctions are applied. Under this traditional approach, the principal parties are the aggrieved person making the allegation and the officer whose behavior is in question. An emerging perspective, however, recognizes that the community and the department as a whole are important stakeholders in the complaint process. Under this more comprehensive view, the civilian complaint process serves not only to redress grievances; it also serves as a management tool, a forum to address public concerns and to enhance public relations, and an opportunity to refine policies and training.

Chapter Overview and Objectives

Drawing on federal consent decrees and memorandums of agreement (MOA) as well as on promising and innovative efforts from police departments across the nation, this chapter explores the benefits and challenges of civilian complaint processes. In its introductory paragraphs, the chapter offers a working definition of the civilian complaint process. This definition is followed by an analysis of the ways in which the civilian complaint process is evolving as well as an overview of the prevalence of civilian complaint processes currently in use in law enforcement agencies.

Moving beyond these introductory materials, the chapter explores the core principles of the civilian complaint process. The chapter asserts that the civilian complaint process succeeds to the extent that it is—and is perceived as being—comprehensive, accessible, fair, and transparent. To the extent that civilians feel able to file a complaint with reasonable convenience, feel sure that every complaint receives a fair investigation resulting in a timely

resolution, and feel aware of the workings and rulings of the civilian complaint process, this process will build community confidence in the police department's determination to serve ethically and efficiently.

From its exploration of core principles, the chapter turns to a consideration of the basic components of the civilian complaint process from the initial filing of complaints to their final adjudication. It explores the standards that emerged from the federal agreements regarding the handling of complaints, as well as those that have been enacted proactively in different departments across the nation.

Finally, this chapter offers a series of recommendations to police departments establishing and implementing a civilian complaint process. Like the chapter's discussion of the civilian complaint process itself, these recommendations result from the careful consideration of federal consent decrees and MOAs, as well as practices from police departments across the nation.

A Definition of the Civilian Complaint Process

The civilian complaint process is the series of steps by which law enforcement agencies accept, investigate, and adjudicate allegations of misconduct or incompetence on the part of police personnel.² In the language of the consent decrees and MOAs, such complaints may address "any action or inaction by [agency] personnel which the source considers to be contrary to law, proper procedure, good order, or in some manner prejudicial to the individual, the [agency], or to the community."³ While such complaints are, in fact, filed mostly by civilians, complainants may also arise from agency personnel or anonymous sources.

The Evolution of the Civilian Complaint Process

Residents, business persons, and other civilians are consumers of police services. When they perceive that they have been aggrieved by acts ranging from discourteous treatment to criminal misconduct on the part of police personnel, they have the right to be heard and to seek remedy. In recognition of this right, police executives have facilitated the acceptance and timely resolution of individual grievances. When warranted, they have acknowledged the mistakes of their agency personnel.

While this civilian complaint process has long existed, police executives' attitudes toward the process are changing. Although police executives once tended to focus narrowly on the adjudication of alleged misconduct and, as a result, to view civilian complaints entirely in a negative light, many are now using civilian complaints as a barometer of public satisfaction and as a general management tool. By engaging in a comprehensive, accessible, fair, and transparent civilian complaint process, police executives are enhancing their agencies' image as professional and ethical organizations while underscoring their commitment to addressing community concerns. By regarding civilian complaints as critical pieces of a data-driven management strategy, police executives are gauging the performance of individual officers, seizing important opportunities to modify policies and procedures, and better guarding against future misconduct on the part of police personnel.

On the level of the individual officer, many police executives rely on civilian complaints as an important indicator by which to gauge officer performance in early intervention systems. For instance, an inordinate number of civilian complaints about an individual officer can alert supervisors to potentially problematic behavior that could benefit from nondisciplinary intervention. Serious and substantiated civilian complaints may also identify instances in which disciplinary action is required.

At aggregate levels, an analysis of civilian complaint trends can be used to determine whether the agency as a whole or particular units within the department are moving in the right direction. If, for instance, one precinct's civilian complaints are trending up while all others are dropping, the police chief and commanders may want to determine what factors are contributing to such an anomaly and what actions, if any, need to be taken. Conversely, if one precinct's civilian complaints are trending down while all others are holding steady or rising, police executives would want to determine the reason for the precinct's apparent success and take steps to assure that similar successful management practices could be transferred to other precincts.

Police executives who proactively use civilian complaint data from a management perspective can use the process to fine-tune agency performance and enhance community trust. An open and constructive approach to handling civilian complaints, instead of a reactive and defensive approach, casts that agency in a positive light.

Publicizing a Positive Attitude About Civilian Complaints

Increasingly, police departments rely on effective complaint processes to inspire public confidence and reinforce community relations. While many of these departments recognize that discouraging civilian complaints can seriously undermine community relations—particularly in minority and other communities that historically have felt disenfranchised—others recognize that their departments actually benefit by publicizing their openness to the complaint process. Police departments of varying sizes and types across the nation are realizing the benefits of comprehensive, accessible, fair, and transparent complaint processes on their web sites and in their official policies. The following three examples from departments of different sizes are illustrative of this type of approach.

Example 1

Many employees view the internal affairs function as strictly negative. Quite the opposite is true. When properly run, the internal affairs function will protect the innocent employee from untrue allegations while maintaining citizen confidence and trust. To ignore or treat citizen complaints with anything less than the utmost of concern will increase the number of complaints, cause a loss of trust and result in demands for citizen review boards.

Source: Midvale (Utah) Police Department's Policy Manual
Agency Profile: Population 28,000; Officers 45

Example 2

Citizen Complaint Process: The mission of the Portland Police Bureau is to maintain and improve community livability by working with all citizens to preserve life, maintain human rights, protect property, and promote individual responsibility and community commitment. Our goals state that our employees must be guided by the principles that every individual has infinite dignity and worth and that we must show respect for the citizens we serve and for the men and women of the Bureau.

A citizen complaint, and its subsequent investigation, causes police to examine the service that we provide to our community and to make necessary improvements in the way we provide services.

Source: Portland (Oregon) Police Bureau web site (www.portlandonline.com/police)
Agency Profile: Population 509,610; Officers 1,028

Purpose and Intent: It is the guiding principle of the Waite Park Police Department that ***all*** allegations of employee misconduct or criticism of its services be acknowledged and addressed. To succeed in this endeavor, this order establishes a comprehensive departmental process to respond to such inquiries and complaints. Its purpose is to provide citizens with a fair and effective avenue to voice their legitimate grievances against the actions of the Police Department, yet to protect departmental employees from false charges of misconduct and wrongdoing.

OBJECTIVES:

- a) To maintain the community's support and confidence in its Police Department by providing a process that assures responsiveness to citizen's inquiries and complaints.
- b) To create a process for dealing with inquiries and complaints, whether originating internally or externally, that permits police managers to monitor departmental compliance with established departmental rules, procedures, and norms.
- c) To clarify employee rights and the due process protection that will be afforded departmental employees in the investigation of inquiries and complaints.

Source: Waite Park (Minnesota) Police Department's Policy Manual
Agency Profile: Population 7,562; Officers 12

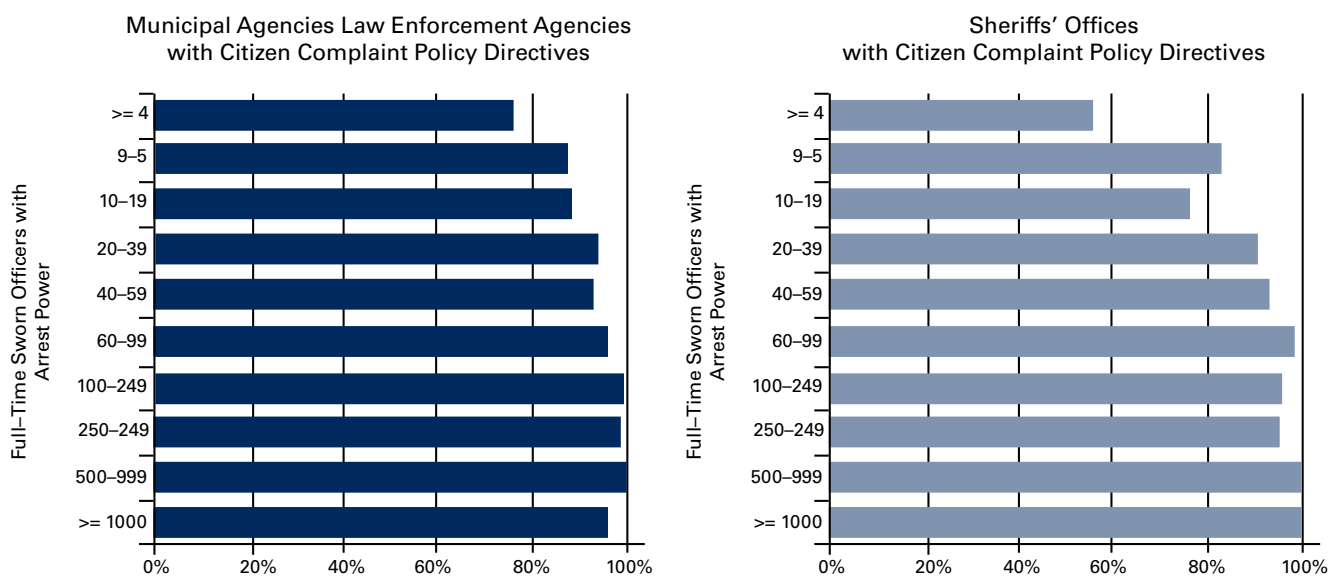
The Prevalence of the Civilian Complaint Process

Major benchmarks for police standards, including the Commission on Accreditation for Law Enforcement Agencies (CALEA) and International Association of Chiefs of Police (IACP) Model Policies, call for policies and procedures for the civilian complaint processes. CALEA standards for complaint processes, for instance, are imbedded with its section on Internal Affairs (52), recognizing that larger departments may have specific internal affairs units, whereas a smaller agency may have to designate this responsibility to an individual officer.⁴ As is discussed in subsequent sections, some agencies rely, if full or in part, on civilian review boards to review civilian-generated complaints.

Without exception, all the federal pattern or practice agreements related to law enforcement agencies address the complaint process. The language within the consent decrees and MOAs related to the complaint process is extensive and addresses both civilian complaints and internal complaints.

The foundation of any complaint process, whether conducted by internal affairs, designated personnel within the department, or by civilian boards is the establishment of clear policy directives. Results from the 2003 Sample Survey of Law Enforcement Agencies (LEMAS) conducted by the Bureau of Justice Statistics (BJS) provided an opportunity to assess the prevalence of policy directives on civilian complaints by department size and type. Details about LEMAS methodology and data are available in the text box on page 31 in Chapter 2.

As the LEMAS results below indicate, across agencies of all sizes, the vast majority of municipal departments and sheriffs' offices reported having civilian complaint policies. While the likelihood of having such a policy was higher in larger departments, these policies are still the norm even in the smallest departments. Among agencies surveyed, about three in four municipal departments with four or fewer full-time officers had such a policy. Based on the LEMAS survey data, all state police agencies, all county police agencies, and all regional police agencies had civilian complaint policy directives.⁵



The Benefits of the Civilian Complaint Process

When police executives recognize that the civilian complaint process may serve as an important management tool and a critical component to creating community trust, they begin to realize the following benefits:

- Enhancing the investigative process to assess officer culpability and to assess the agency need to enhance policies and training
- Rendering clear findings in individual cases
- Identifying individual officers who may be in need of intervention, either nondisciplinary or disciplinary, as appropriate
- Identifying pockets of risk within the department
- Providing opportunities to modify and improve policies and training
- Developing strategies to reduce or prevent misconduct
- Enhancing organizational efficiency
- Ensuring accountability within the agency
- Ensuring responsiveness and accountability to the community
- Enhancing community trust as well as building and sustaining community relations.

The Core Principles of the Complaint Process

Effective policing depends on the trust and confidence of the community. Police rely on individuals within the community to report crimes, serve as witnesses, and occasionally offer assistance. From a community policing and service-oriented perspective, the community's satisfaction with police services is of paramount importance. This satisfaction is the result, in part, of how police handle the discrete instances of dissatisfaction that are brought to their attention through civilian complaints. The civilian complaint process may turn dissatisfaction into confidence as police adhere to four core principles that underlie an effective complaint process.

1. An effective complaint process must be comprehensive. It must accept and act on all civilian complaints. The system should also integrate complaints from other sources, including internal complaints as well as alleged acts of misconduct that arise in the context of civil or criminal proceedings against agency personnel.

Across departments, the preponderance of misconduct allegations are made by civilians—nonpolice personnel—who have had contact with the police. These contacts may involve individuals who seek police assistance; are crime victims; are crime suspects; are witnesses, or potential witnesses; and those who have been stopped for traffic violations. While an agency's complaint process must treat these civilian complaints seriously, it must not discourage or ignore the complaints that arise from other sources.

Another significant source of misconduct complaints is department personnel themselves. Historically, some observers have argued that police maintain a "blue wall of silence" and that officers who observe misconduct among their fellow officers are reluctant to report it. Many departments, however, have implemented strict stipulations that hold police officers

accountable for knowingly failing to report misconduct of fellow officers. By expanding the scope of their complaint process to address not only civilian complaints but also the complaints of officers themselves, departments underscore their commitment to ethical policing and strict accountability.

The language of federal consent decrees and MOAs expresses an unwavering commitment to addressing internal complaints. These agreements stipulate that officers are required to report other officers' misconduct. For instance, the consent decree with the Pittsburgh Bureau of Police underscored the department's existing policies and practice: "the City shall continue to require officers to report misconduct by other officers. Misconduct by fellow officers shall be reported directly to OMI [Office of Municipal Investigations] or through an officer's chain of command."⁶

The MOA of the Buffalo Police Department expresses a similar requirement and, although it acknowledges the limitations imposed by the local collective bargaining agreement, enjoins the department to attempt to surmount these limitations:

*To the extent allowed under the applicable collective bargaining agreement in force on the effective date of this Agreement, the City shall require officers to report misconduct by other officers. To the extent not already allowed under the applicable collective bargaining agreement in force on the effective date of this Agreement, the City shall initiate negotiations and shall bargain in good faith for the right to require officers to report misconduct by other officers.*⁷

While the most common sources of misconduct allegations are civilian complaints and the reports or allegations of other officers, there is a growing recognition that a comprehensive complaint process should address complaints arising from other, nontraditional sources. For example, allegations of misconduct may emerge during internal investigations, or instances of alleged misconduct may come to light through civil or criminal suits filed against officers or through media reports. Federal consent decrees and MOAs stress the importance of investigating all misconduct complaints, regardless of source. For instance, the Los Angeles Police Department (LAPD) consent decree requires that the city inform the police department whenever "a person serves a civil lawsuit on or files a claim against the City alleging misconduct by an LAPD officer or other employee of the LAPD."⁸ This consent decree also stipulates that the department will "require all officers to notify without delay the LAPD whenever the officer is arrested or criminally charged for any conduct, or the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity)." Other federal agreements go further to stipulate that such notifications are required regardless of whether this behavior occurs while the officer is on or off duty.

This comprehensive approach is advocated not only in federal consent decrees and MOAs, but also in the language of individual police agency policies, in state standards, and in professional standards such as CALEA and IACP model policies. The IACP Model Policy on Standards of Conduct, for instance, requires that "officers who are arrested, cited, or come under investigation for any criminal offense in this or another jurisdiction shall report this fact to a superior as soon as possible."⁹

2. An effective civilian complaint process must be accessible. Civilians must understand, have easy access to, and feel comfortable with complaint filing procedures.

In addressing the civilian complaint process, federal consent decrees and MOAs are consistent and unequivocal on the need for accessibility. In general, these consent decrees and MOAs require that filing a complaint be reasonably convenient. They also set a tone of inclusiveness rather than exclusiveness by requiring that, at a minimum, all complaints must be accepted and afforded some level of investigatory review.

In many of the pattern or practice investigations leading up to consent decrees and MOAs, the access to civilian complaint processes were found to be inadequate. Several of these investigations found that police were taking actions to actively discourage or effectively preempt certain civilian complaints. Some disincentives to reporting complaints are inherent within complaint forms themselves. For instance, language on complaint forms sometimes stipulates that a civilian complaint will not be accepted unless notarized. When followed by language stating that knowingly making false, untrue, or malicious complaints will be subject to criminal prosecution, some would-be complainants may be intimidated.

In response to these conditions, the language of consent decrees and MOAs seeks to establish civilian complaint policies, procedures, and actions that ensure that no civilian is intimidated, discouraged, or impeded from making a complaint and that *all* complaints are taken seriously.

When considered together, the federal consent decrees and MOAs, recommendations from professional organizations such as CALEA standards and IACP Model Policies, and policies of individual departments provide a clear picture of the evolving standard. It is not enough that civilians who come in contact with the police merely be given an opportunity to file complaints. Departments under federal agreements were required to develop proactive public outreach strategies to inform the community of their right to file complaints. The general intent of these strategies is to enhance accessibility by creating greater awareness regarding the complaint process. The specific public outreach requirements stipulated in the federal consent decrees and MOAs include the following:

- Establish public information campaigns about complaint filing procedures
- Establish methods for filing complaints other than formal written complaints including:
 - o Telephone hotlines
 - o Web-based filings
 - o E-mail filings
 - o Fax submissions
- Post information about complaint filing procedures on the agency's web site
- Provide complaint notifications, complaint filing instructions, and complaint forms in multiple languages, as appropriate, considering the particular jurisdiction's population.

While the common thread through federal consent decrees and MOAs is that the complaint filing process should be accessible, these agreements vary substantially because they are responsive to individual investigations and are tailored to the specific circumstances and organizational capacities of different departments. The following sections of the MOA between

the Washington, D.C., Metropolitan Police Department (MPD) and the U.S. Department of Justice provide an illustrative example of the specific requirements made on the department to ensure open and broad access to file civilian complaints.

92. Within 90 days from the effective date of this Agreement, MPD shall make it possible for persons to initiate complaints with MPD in writing or verbally, in person, by mail, by telephone (or TDD), facsimile transmission, or by electronic mail. MPD shall accept and investigate anonymous complaints and complaints filed by persons other than the alleged victim of misconduct. MPD shall ask anonymous and third-party complainants for corroborating evidence. MPD shall not require that a complaint be submitted in writing or on an official complaint form to initiate an investigation.

93. Within 120 days from the effective date of this Agreement, the City shall institute a 24-hour toll-free telephone hotline for persons to call to make a complaint regarding officer conduct. The hotline shall be operated by OCCR. The City and MPD shall publicize the hotline telephone number on informational materials and complaint forms. The City shall tape record all conversations on this hotline and shall notify all persons calling the hotline of the tape recording. The City shall develop an auditing procedure to assure that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained. This procedure shall include monthly reviews of a random sample of the tape recordings.¹⁰

3. An effective civilian complaint process must be fair and thorough. The investigation of civilian complaints must proceed according to high standards.

In their discussion of the investigation of civilian complaints, federal consent decrees and MOAs consider a broad range of issues including standards of proof, thoroughness of investigations, supervisory roles, and quality of data. While these agreements impose specific requirements on specific departments as a result of findings from individual investigations, a standard of fairness is common across the agreements. In general, federal consent decrees and MOAs require that departments give civilian complaints thorough, rigorous, unbiased, and timely investigation. Indeed, in many ways, federal consent decrees and MOAs call for investigatory procedures that parallel criminal investigations.

4. An effective civilian complaint process must be transparent. Departments should keep complainants apprised of specific complaint proceedings and the community apprised of summary information regarding the civilian complaint process.

The federal consent decrees and MOAs are resolute in requiring that the civilian complaint process be transparent both at the level of the individual complainant and of the community as a whole. In general, consent decrees and MOAs require that complainants be periodically informed of the progress of the complaint investigation. They also require that complainants

be notified of the outcome at the conclusion of this process. These requirements are in keeping with standards established by professional organizations including the CALEA policy on internal affairs standards:

The agency keeps the complainant informed concerning the status of the complaint, to include at a minimum: (a) verification of receipt that the complaint has been received for processing; (b) periodic status reports; and (c) notification of the results of the investigation upon conclusion.¹¹

Federal consent decrees and MOAs establish the transparency of the civilian complaint process at the community level by requiring monitoring of the process by independent auditors and by requiring departments to “maintain and periodically disseminate to the public a statistical summary report regarding complaints files and resolution of those complaints.” Many departments routinely include this summary information in their annual reports or on their web sites. Ensuring the transparency of the civilian complaint process by providing summary information is sound public policy.

Variations in the Civilian Complaint Process

The nature of the civilian complaint process varies considerably by department. This is the result, in part, of the varying roles that civilians play in overseeing the process. In some departments, civilian complaint review boards are composed entirely of civilians and are empowered to conduct investigations and issue subpoenas independently. In many departments, particularly smaller departments, the responsibility for overseeing the civilian complaint process is internal. Many departments have civilian complaint processes that fall somewhere in between independent civilian review boards and strictly internal processes.

The following discussion considers, first, the varying levels of civilian involvement in the civilian complaint process; second, the basic components of the process—filing, investigation, and resolution—that occur whether civilians or police department personnel oversee the handling of civilian complaints; and third, the actions taken by departments to ensure both internal accountability and accountability to the public they serve.

Assessing Civilian Involvement in the Complaint Process

Increasingly, police executives recognize the advantages of taking proactive steps to establish civilian complaint processes that are comprehensive, accessible, fair, and transparent. Historically, the impetus for establishing a civilian complaint process has emerged both from within and without departments. Law enforcement leaders continually must balance pressures from within the department and police unions versus outside the department—through politicians, activists, and community groups—in assessing how involved civilians should be in the processing of complaints.

In the absence of meaningful internal oversight, or in response to processes that were perceived as ineffectual, civilian groups and advocacy organizations have felt compelled to call for an external complaint process and demand an active role in its oversight. Prudent

police executives understand that taking the initiative—rather than reacting to others’ dissatisfaction—offers them the best opportunity to design and implement an effective civilian complaint process. In particular, making decisions regarding civilian involvement in that process provides police executives with the opportunity to address important matters of public concern in a proactive, forthright manner, rather than in reaction to some crisis or in response to adverse public sentiment.

Making decisions regarding the structure of civilian complaint processes and the degree of civilian involvement is remarkably complex. While numerous arguments exist both for and against civilian involvement in the civilian complaint process, it is beyond the scope of this guide to examine these arguments in depth or make recommendations. Instead, readers should consult the IACP Ethics Toolkit article, “Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs,” which offers several critical tools for department decision makers.¹²

As a brief overview, the article offers essential action steps for assessing a department’s need for civilian involvement in the complaint and misconduct resolution process:

- Assess whether a problem exists
- Examine existing literature and practice regarding forms of citizen review and their impacts
- Confer with constituencies that must be involved in the decision to establish a citizen review device
- Work with citizens and government officials to understand how the review process may affect them
- Understand possible/probable outcomes of citizen review
- Complete a preliminary cost analysis to determine the financial impact on the department and the city.

A Typology of Complaint Processes Based on Citizen Involvement

In many jurisdictions, complaint procedures arise out of complex political processes and sometimes in response to publicized incidents of police misconduct. Not surprisingly, there are countless variations of the theme. Again, it is beyond the scope of this chapter to review all of these; however, the following classification from the IACP Ethics Toolkit helps put the range of options in perspective.

Class I: Citizen Review Board. Citizen complaints are reviewed and investigated, and recommendations for disciplinary or policy action are made by a board comprised wholly of citizens. The board may or may not have subpoena power. Under this model, a citizen review board handles each step on the continuum from original complaint through review, investigation and recommendations for sanctions. This is the most independent citizen review model.

Class II: Police Review/Citizen Oversight. Complaints are reviewed and investigated, and recommendations for disciplinary or policy action are made by law enforcement officers, with oversight of each case by a citizen or board of citizens.

Under this model, the steps on the complaint continuum are handled by the police. A board of citizen reviewers, or a single individual, reviews those actions/determinations. Since law enforcement conducts the initial fact-finding investigation, the Class II model is considered less independent than Class I.

Class III: Police Review/Citizen-Police Appeal Board. Complaints are reviewed and investigated by law enforcement officers in the Internal Affairs Unit, which recommends disciplinary action to the chief. Complainants who are not satisfied with outcomes of investigations can appeal for review to a board composed of both citizens and sworn officers.

Under this model, the complaint process is handled by the police. In the event a complainant is not satisfied with the outcome of his or her case, a board that includes police officers undertakes review of how the case was originally investigated. Citizen participation is limited to appeal review only.

Class IV: Independent Citizen Auditor. An independent citizen auditor or auditor system reviews the law enforcement agency's internal complaint review process (IA) and makes recommendations as needed.

Under this model, the complaint process is fully in the hands of the police. However, an auditor or audit team has access to that process and reviews it for effectiveness and accuracy of findings, making recommendations to improve the process as needed. The auditor reviews completed complaint cases and contacts complainants to assess satisfaction with outcome.

Considerations for Civilian Review in Complaint Processing

Law enforcement leaders must weigh carefully both the advantages and disadvantages of civilian review, considering factors such as the local political climate. Demands by the public, by special-interest groups, and by politicians can often put the police executive in a difficult position. Calls for civilian involvement in the process often will have to be weighed against the opposition of the rank-and-file and the police union. If civilian review is seen as a viable option, determining the level of civilian involvement—from far-reaching investigatory and subpoena power to a limited advisory function—is a decision that police executives will want to consider carefully.

Decisions about civilian review must be made in consideration of many factors. The article mentioned above from the IACP Ethics Toolkit addresses multiple considerations in this process, particularly as they relate to department size and existing police-community relations.

Not all police departments need or would derive substantial value from formalized citizen review. In jurisdictions where community trust is solid and durable, strong police-community bonds exist, community access is institutionalized, and misconduct is not frequent nor egregious, citizen oversight is neither likely to emerge as an issue nor to have a profound impact on existing conditions. Smaller departments, in particular, have the advantage of constant informal interaction with citizens to maintain close ties and receive information and guidance. As communities and police agencies grow in size, lines of citizen/police contact may need strengthening through formality. Community leaders may suggest a citizen review mechanism to ensure involvement in problem resolution at the officer and/or department level. Even in these cases, alternative interventions may satisfy needs.¹³

Statistical Snapshot of Civilian Involvement in the Complaint Review Processes

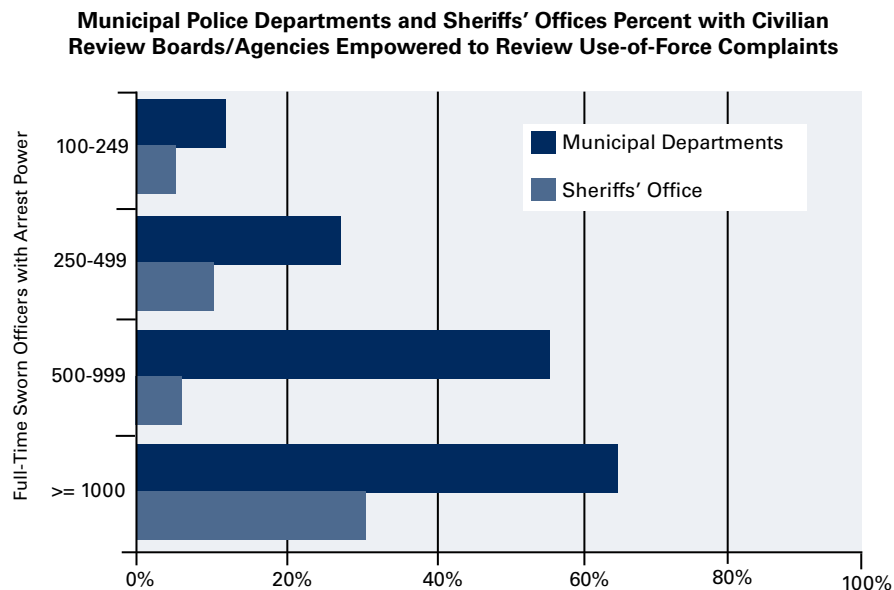
Given the variations in local practice, it is difficult to assess the level of civilian involvement in the complaint process; however, greater civilian involvement tends to be associated with larger departments.

The 2003 Sample Survey of Law Enforcement Agencies (LEMAS) addresses the question of whether law enforcement agencies with 100 or more full-time sworn officers with arrest powers have within their jurisdictions a civilian complaint review board or agency that is empowered to investigate use of force complaints. (The LEMAS survey contains no corresponding questions about whether civilian review boards/agencies exist for other types of civilian complaints.)

Considering the specificity of this question, the LEMAS survey reveals that approximately 19 percent of municipal law enforcement agencies with 100 more sworn officers with arrest power use some form of civilian review in which civilians are empowered to review use-of-

force complaints. The comparable figure for county police departments is 25 percent and for sheriffs' departments is 6 percent. None of the 49 state police agencies indicated they had such civilian review process for use-of-force complaints.

As the charts below indicate, for municipal police departments and sheriffs' offices, the likelihood of civilian review for use of force generally increases with agency size. Based on these data, it would appear that in municipal departments some level of civilian involvement occurs in the slight majority of departments with more than 500 sworn officers with arrest powers.



The LEMAS survey further revealed that, overall, about one in four of these civilian review boards had independent investigative authority with subpoena powers.

The Basic Steps in Handling Civilian and Internal Complaints

Whatever level of civilian involvement a department may establish, the basic steps necessary for the handling of complaints remain the same. These include the filing of complaints, the investigation of complaints, and the resolution of complaints. While different departments may handle these basic operations differently, the following discussion offers an overview of important commonalities.

Step One: The Complaint Receipt and Filing Process

Although federal consent decrees and MOAs impose specific requirements on specific departments, they enjoin all departments to establish an accessible civilian complaint process. Making the civilian complaint process accessible depends on a number of organizational, community, and public relations considerations. The single most important factor, though, may well be the demeanor and behavior of officers on the streets. Notifying civilians about

their right to file a complaint is the critical gate-keeping event. The willingness of officers to meet this requirement, therefore, is critical to an open and successful civilian complaint process.

To ensure accessibility, the federal consent decrees and MOAs consistently issue the following requirements regarding officer conduct in the complaint filing process:

- Officers are to provide their name and badge number to civilians on request.
- Officers are required to provide complaint procedure information to civilians on request.
- Officers are required to have complaint forms available for civilians on request.

To underscore the importance of an accessible complaint process, consent decrees and MOAs stipulate that departments must hold officers accountable when they fail to provide notification of complaint filing procedures or when they, in any way, inhibit the civilian complaint process:

- The agency should have policies and procedures for disciplining officers who fail to notify a civilian of the complaint process when the civilian indicates a desire to file a complaint.
- The agency should have policies and procedures prohibiting any act that impedes or intimidates a civilian from making a complaint; these policies should contain disciplinary actions.

Such policy requires many departments to initiate separate investigations against officers who fail to notify civilians of their right to file a complaint. The LAPD consent decree is clear on this point:

The LAPD shall initiate a Complaint Form 1.28 investigation against (i) any officer who allegedly fails to inform any civilian who indicates a desire to file a complaint of the means by which a complaint may be filed; (ii) any officer who allegedly attempts to dissuade a civilian from filing a complaint; or (iii) any officer who is authorized to accept a complaint who allegedly refuses to do so.¹⁴

As noted in the discussion of core principles, entire departments as well as individual officers must accept the responsibility of ensuring accessible civilian complaint processes. Federal consent decrees and MOAs consistently urge departments to take the following measures:

- Departments should have an open and accessible process by which they accept complaints in multiple formats (e.g., in person, by mail, and by e-mail).
- Departments should allow complaints to be filed in different public or private facilities and should specifically assure that complainants have options other than having to go to a police facility to file a complaint.

In addition to offering directives to officers and departments regarding the filing of complaints, the federal consent decrees and MOAs also stipulate a number of conditions and behaviors by personnel that are aimed at making the initiation process open and unbiased. Specifically, the consent decrees and MOAs set a tone of inclusiveness rather than exclusiveness regarding complaints. They insist that all complaints be taken seriously. Among the measures regarding the intake of complaints that ensure that the complaints are treated seriously are the following:

- Officers who perform complaint intake are prohibited from making assessments about the complainant's mental capacity or about the veracity of the allegations (they may, however, make factual comments about the complainant's demeanor or physical condition).
- Third-party complaints (e.g., those by witnesses) are allowed.
- Anonymous complaints are allowed.

While the consent decrees and MOAs thus work toward inclusiveness, they do not stipulate that certain complaints, such as anonymous complaints, should necessarily have the same weight as other complaints throughout the process. For instance, while the LAPD consent decree stipulates that anonymous complaints must be received and investigated, it also stipulates that an anonymous complaint that is not substantiated should not be used against an officer as a basis for discipline or to deny promotion.

Beyond merely making the complaint process accessible, some department policies expressly acknowledge the right of individuals to file complaints and contain language that helps facilitate complaints. The following excerpt illustrates this approach.

If the complainant needs assistance completing the form, offer whatever assistance is required. Refusing to provide an initial complaint form is a violation of state law and of department guiding principle and procedure.

Attempting to screen or discourage those who ask for forms is not an option. As soon as a form is requested, it needs to be provided. Contacts do not have to justify their request for a form.

Source: Waite Park (Minnesota) Police Department Guiding Principles
Agency Profile: Population 7,562; Officers 12

Step Two: The Complaint Investigation Process

The federal consent decrees and MOAs require that departments give complaints—specifically civilian complaints—full and rigorous investigatory attention. To do this effectively and appropriately, complaints first must be categorized.

Categorization of Complaints

Police executives, administrators, and civilian reviewers have long recognized that not all civilian complaints are of the same gravity or require the same type of investigation or

intervention. Civilian complaints range from gripes to allegations of felony offenses. To be clear, this does not mean that certain types of low-level complaints can be summarily dismissed.

Because the procedures for investigating complaints depend on the nature and seriousness of the allegation, many departments define multiple categories of complaints. These categories often will determine, particularly in larger departments, the administrative processes type of misconduct hearing that will take place.

Complaints usually are categorized according to the seriousness of the allegation. For instance, the Boise (Idaho) Police Department identifies less serious allegations as Class II complaints, which are defined as “those involving allegations of driving violations, demeanor complaints, and minor enforcement complaints.” Class I complaints are defined as those that allege more egregious behaviors. They are specifically defined as “all other allegations including serious allegations of policy or criminal conduct.” In addition to these classes, the Boise Police Department also categorizes some complaints as “Citizen Inquiries.”¹⁵ Although civilian inquiries may be generated like other complaints, they are commonly questions about whether procedures were followed or generalized comments that are not directed at an individual officer or employee.

Other departments use similar classification schemes. For instance, the Missouri City (Texas) Police Department categorizes complaints into two classes quite like to those of the Boise Police Department. In Missouri City, Class I allegations refer to “violations of federal, state or local laws, use of force, or incidents of potential public concern/outcry.” Class II allegations involve other types of complaints, including complaints of rudeness/discourtesy, inadequate/incomplete case investigation, and improper tactics/procedures.¹⁶

Some departments opt for more detailed classification schemes. For instance, the Tempe (Arizona) Police Department and the Prince George’s County (Maryland) Citizen Complaint Oversight Panel each rely on multiple category schemes. These are illustrated below.

Complaints received will generally fall into one of the following categories:

- (1) **Serious Misconduct**—allegations which may constitute a violation of criminal law or conduct that could result in suspension, disciplinary pay reduction, demotion, or termination.
- (2) **Minor Misconduct**—allegations which do not appear to be a violation of criminal law and which would not result in suspension, demotion, disciplinary pay reduction, or termination.
- (3) **Policy Infraction**—allegations which are not of a serious nature, but involve some infraction of department policy.
- (4) **Inquiry**—those complaints against department policy.

(5) **Administrative Investigation**—initiated at the direction of the Chief of Police and conducted by the Internal Affairs component.

Source: Tempe (Arizona) Police Department's Policy Manual Agency
Profile: Population 165,000; Officers 327

COMPLAINT CLASSIFICATION

All incoming complaints are assigned to the following investigative categories based on the most serious allegation in the complaint:

Special Investigations (SI): Complaints that allege a criminal act or could result in a criminal charge or investigation, such as domestic violence, DWI/DUI, theft, unauthorized access to a criminal data base, uses of force that result in injury and all discharges of firearms. A special investigation team within the police department investigates these complaints.

Internal Affairs Investigations (IA): Complaints alleging use of abusive, derogatory or inappropriate language, most uses of force that do not result in injury, and certain types of misconduct.

Field Cases Investigations (FC): Complaints alleging offenses such as unbecoming conduct, unreported misconduct, process violations, minor uses of force, and failure to attend to duty. These complaints are referred directly to district commanders for investigation.

Police Supervisory Investigations (PS): Complaints initiated by police supervisory staff regarding an officer's performance of or failure to perform his assigned duties.

Source: Prince George's County (Maryland) Citizen Complaint Oversight Panel: 2003 Annual Report¹⁷
Agency Profile: Population 795,000; Officers 1,400

Investigatory Procedures for Categorized Complaints

As discussed, legitimate complaints are most often categorized according to their level of seriousness. Not surprisingly, complaints of differing levels of seriousness are handled through different investigatory procedures. Commonly, less serious complaints are reviewed by the chain of command while more serious complaints are reviewed by specialized units within the department or external boards or commissions that have various degrees of independence from the department. For instance, the policy of the Tempe Police Department calls for supervisory and command personnel to resolve complaint allegations involving minor incidents or inquiries. The policy, however, requires that more serious allegations be recorded on the department's Employee Complaint/Commendation Report and be brought to the attention of the chief of police for further processing that may include referral to Internal Affairs.

While allowing for variation according to the needs of different departments, the federal consent decrees and MOAs nevertheless are firm in the requirement that all departments give all complaints—particularly civilian complaints—thorough, rigorous, unbiased, and timely investigation. In their discussion of the investigatory process, the agreements explore a wide range of issues including the thoroughness of investigation, standards of proof, quality of data, the role of supervisors, and timeliness of dispositions. In considering these issues, the agreements are deliberately prescriptive and proscriptive—addressing both what departments ought to do and ought not to do.

Thorough Investigations

The federal consent decrees and MOAs establish the following conventions to ensure the thoroughness of complaint investigations:

- Involved officers and witness officers are obligated to appear for investigative interviews.
- Supervisors and command staff who were at the scene of the relevant incident should be interviewed.
- Photographs of officers' and complainants' injuries should be taken, if applicable.
- All related audio and visual recordings (e.g., from in-car cameras) should be reviewed for evidentiary content.
- Investigators are required to canvas the scene for relevant evidence, if applicable.
- Investigators are required to actively seek out witnesses, if applicable.
- Investigatory processes should assess the consistency of information across statements by complainants, officers, and witnesses.
- Investigatory processes should be documented in standardized reports.

Rigorous Legal Standards

The federal consent decrees and MOAs establish the following conventions to ensure the integrity of complaint investigations from a legal perspective:

- The evidentiary standard for complaint resolution is preponderance of evidence.
- A finding or admission of guilt by the complainant on criminal charges related to the incident should not be considered evidence weighing against the complainant.

- Unavailability of the complainant or withdrawal of the complaint should not automatically result in the complaint investigation being dismissed.
- During the complaint filing and investigation process, no civilian can be required to waive his or her right to sue for police misconduct unless he or she has a lawyer present.

In many ways, the language of the consent decrees and MOAs calls for investigatory procedures that parallel the rigor and legal standards required in criminal investigations.

Unbiased Investigations

The federal consent decrees and MOAs establish several evidentiary and investigatory conventions to ensure that investigations are not conducted in a manner that allows biases in favor of the police. These are particularly germane to internal investigations.

- Officers' statements should never receive automatic preference over the complainants' statements.
- Group interviews of complainants, witnesses, and indicated officers are prohibited.
- Leading questions are prohibited during investigatory processes.
- Officers named in the complaint should not be materially involved in the investigation.
- Officers not named in the complaint but who nevertheless supervised, approved, or were directly involved in the conduct that is the subject of the alleged complaint should not be materially involved in the investigation.
- Officers not named in the complaint but who may be party to the complaint investigation (e.g., required to give an investigatory interview) should not be materially involved.

Timely Investigations

Although the federal consent decrees and MOAs establish the clear expectation that complaint investigations must be timely, the actual timelines established for the completion of complaint investigation differ across departments. The most common timeline for complaint investigation completion, stipulated in agreements with Buffalo, Cincinnati, Washington, D.C., and Montgomery County, was 90 days. The New Jersey State Police agreement, however, stipulated 45 days while the Steubenville, Ohio agreement stipulated 30 days. In the LAPD agreement, the "expected" timeline to complete complaint investigation was 5 months, but this directive was couched in the following language:

All investigations of complaints shall be completed in a timely manner, taking into account: (a) the investigation's complexity; (b) the availability of evidence; and (c) overriding or extenuating circumstances underlying exceptions or tolling doctrines that may be applied to the disciplinary limitations provisions (i) applicable to LAPD officers and (ii) applicable to many other law enforcement agencies in the State of California. The parties expect that, even after taking these circumstances into account, most investigations will be completed within five months.¹⁸

As the LAPD agreement makes clear, the timeliness of an investigation must be defined considering several factors, including the number of complaints a department must investigate, the resources it has to dedicate to investigations, and the complexity of each complaint. Departments should also consider the impact of state laws or collective bargaining agreements on their ability to investigate complaints in a timely manner. All departments should establish and adhere to a reasonable timeline. They also should stipulate that there may be exceptions to these timelines when exceptional circumstances arise. Certainly, the fairness and comprehensiveness of complex complaint investigations should not be compromised by time constraints.

Step Three: The Complaint Resolution Process

The federal consent decrees and MOAs stipulate that the resolution of any complaint must be based on an investigation that is thorough, rigorous, unbiased, and timely and that adheres to a preponderance of evidence standard. The agreements also address the appropriate methods by which the resolutions of complaint investigations are made known.

Disposition

All complaint investigations must be resolved with a disposition or “conclusion of fact.” Although the terminology varies slightly across consent decrees and MOAs, these dispositions range from full exoneration of the officer to the full substantiation of the complaint allegation. The dispositions most commonly stipulated in the consent decrees and MOAs fall into the following four categories with their accompanying definition:

- **Sustained:** Preponderance of the evidence shows that misconduct or inappropriate behavior occurred.
- **Unfounded:** Preponderance of the evidence shows that misconduct or inappropriate behavior did not occur.
- **Exonerated:** The conduct described by the complainant or other referral source occurred, but did not violate the agency’s policy and/or relevant laws.
- **Not Sustained/Not Resolved/Insufficient Evidence:** There is insufficient evidence to determine whether the alleged misconduct occurred.

Record of Disposition

The federal consent decrees and MOAs stipulate that complaints should be resolved in writing. While the agreements do not prescribe a particular format for these reports, they do stipulate that the reports should contain both the disposition of the complaint and the grounds for that decision. Some agreements further stipulate that the report identify any apparent inconsistencies among statements of complainants, witnesses, and officer interviews that became apparent during the investigation. All reports should explain any sanctions imposed on the officer who is the subject of the complaint, including disciplinary and nondisciplinary actions. Finally, the consent decrees and MOAs are resolute in requiring that complainants be notified of the outcome at the conclusion of the process.

Ensuring Accountability in the Complaint Process

Departments of all sizes and jurisdictions dedicate significant resources to establish and operate civilian complaint processes. The federal consent decrees and MOAs seek to ensure that these resources are expended productively by demanding accountability both within the department and for the benefit of the public the department serves.

Internal Accountability

The federal consent decrees and MOAs seek to ensure accountability for the civilian complaint process within departments through careful stipulations regarding supervisory roles. These stipulations govern the way individual supervisors handle individual complaints as well as they way departments as a whole supervise the complaint process in general. For instance, consent decrees and MOAs require that an officer's direct supervisor should be notified as soon as possible anytime an officer is named in a civilian complaint or is subject to an internal misconduct allegation. These agreements also clearly delineate supervisory authority in general. For instance, consent decrees and MOAs decree that the authority for resolving a complaint investigation—often dependent, as noted earlier, on the nature and seriousness of the allegation—generally rests with the supervisor or a specifically designated investigatory officer, such as one assigned to the department's internal affairs unit. In general, the federal consent decrees and MOAs stipulate that the chief and supervisor have an oversight role and may call for the involvement of specifically designated investigatory officers, as needed, to ensure a fair investigation.

In addition to these stipulations, which guarantee the careful handling of individual complaints, the consent decrees and MOAs stipulate a general monitoring of the overall progress, timeliness, and completeness of all complaint investigations. Depending on the agency size and the jurisdiction of complaint review (e.g., by chain of command or within internal affairs), managers are responsible for the overall monitoring. As a part of this monitoring process, some departments were required to engage external auditors or monitors to conduct audits of the complaint investigations. These audits should be designed to determine whether the complaint process is upholding standards of thoroughness, rigor, and timeliness. Similar internal auditing regimens, often under the auspices of a professional standards are common, particularly in larger departments.

The complaint process audit outlined in the Pittsburgh consent decree is representative of the substance and scope that the agreements seek to establish for departments' auditing processes generally:

71. The auditor shall perform quality assurance checks of OMI investigations. The City shall provide the auditor with full access to all OMI staff and records (including databases, files, and quarterly statistical summaries), the automated early warning system described in Paragraph 12, all information regarding officer use of force and searches and seizures (including the use of force reports required by Paragraph 15, and the search and seizure reports required by paragraph 15), all information required in Paragraph 16, and all relevant City manuals of policies and procedures that the auditor deems necessary to fulfill his or her duties, as defined

below. The auditor shall review and evaluate the following information, and issue a quarterly report to the parties and the Court describing the review and analysis: a. All OMI final reports as described in Paragraph 63, and all remedial training and disciplinary records described in Paragraphs 41 and 21(c). The City shall forward all OMI final reports and all disciplinary and training records to the auditor immediately upon their completion. b. The substance and timeliness of at least 50% of all OMI investigations completed during each quarter of the City's fiscal year. c. Statistical information on the number and types of complaints of PBP misconduct, the timeliness of the investigations, the disposition, and any remedial training, counseling, discipline, transfers, or reassignments. d. Discipline, remedial training, mandatory counseling, transfers, and reassignments actually imposed as a result of each complaint. e. Officer use of force, searches and seizures, and traffic stops.¹⁹

The Role of Internal Affairs

In most departments, internal affairs units play a role in the complaint investigation and resolution process. In some departments, particularly smaller departments, internal affairs units may play the primary role in investigating serious complaints or all complaints. While adjudicating complaints in a fair and equitable manner is a clear mandate, internal affairs units must attend to a broader range of concerns than just the adjudication on individual cases. As with external oversight bodies, they must demonstrate a commitment to enhance public trust and assess whether deficiencies in department policies, procedures, or training may have contributed to the problematic behavior. These objectives apply whether internal affairs plays the sole role in investigating complaints or works in tandem with civilian oversight.

Accountability Through Data Management

Federal agreements establish provisions that promote individual and departmental accountability for the civilian complaint process through the effective collection and management of complaint data. Provisions common across the consent decrees and MOAs include the following:

- The department is to assign a tracking number to each unique complaint.
- The department should establish a written protocol for use of the complaint information system.
- The department should take appropriate steps for linking and integrating complaint data with the early intervention (risk-management or personnel assessment) system.
- The department is required to maintain complaint data for a specified period of time for the purpose of maintaining complaint histories on individual employees or summary reports by agency or unit. (the period of time, which varies by department, may reflect the influence of factors such as state law or collective bargaining agreements).

Taken together, these provisions aid agency management in using complaint data to enhance accountability. Many agencies have proactively adopted similar data-management strategies, including integrating complaint data into their early intervention systems, and publishing summary data as a means of keeping their communities informed.

Public Accountability

The federal consent decrees and MOAs also seek to ensure accountability of the civilian complaint process by stipulating that departments make summary reports of misconduct complaints available to the public. The agreements impose the following requirements:

- The department is to maintain summary reporting ability, including the ability to create complaint history summaries by individual officer or by unit.
- The department is to maintain and periodically disseminate to the public a statistical summary report regarding complaints files and resolution of those complaints.

While the agreements impose the requirements across departments, departments share summarized information on the filing, investigation, and resolution of complaints with the public in various ways. Some departments routinely include this information in their annual reports. Other departments post this information on their web sites.

While the sophistication and level of detail of these summary reports vary considerably by department, providing such reports is sound public policy. The very availability of this summary information sends an important message of transparency and accountability to the public. With summary information in hand, the public can better understand the workings of the complaint process. If the summary report contains monthly, quarterly, or yearly comparisons, then the public is able to assess whether complaints are generally on the rise or dropping. If the summary report breaks down particular types of complaints, such as rudeness or excessive force, by time period, then the public is able to make similar assessments at a more detailed level.

Departments are holding themselves accountable to the communities they serve by offering these summary reports in clear and informative formats. For instance, the table below, available on the web site of the Seattle (Washington) Police Department (SPD), provides information regarding trends of complaint allegations during 6 years.

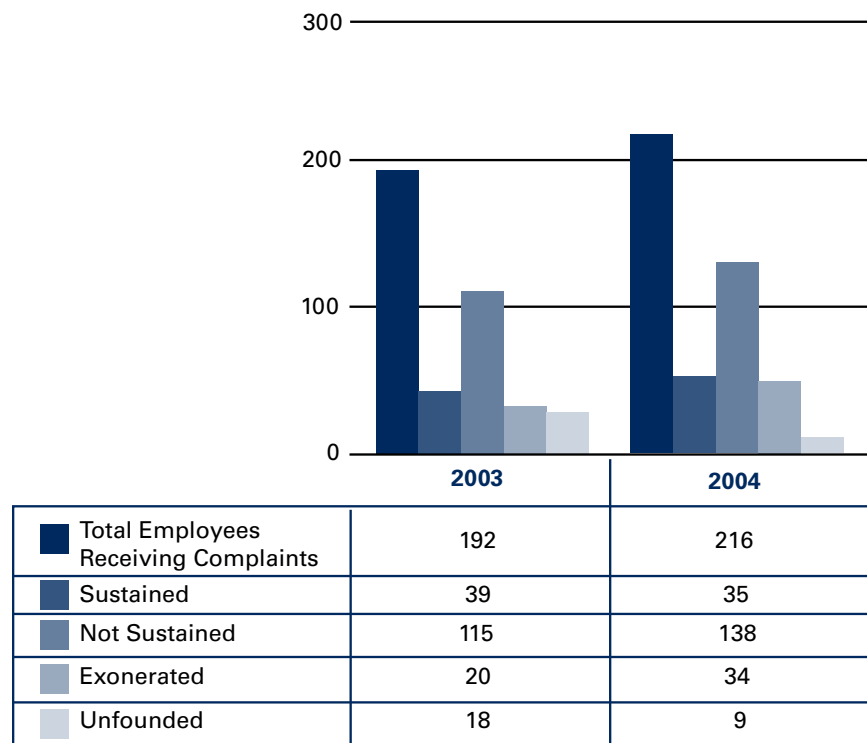
Type of Allegation	1997	1998	1999	2000	2001	2003
Unnecessary Force	79	64	61	94	105	80
Conduct Unbecoming on Officer	39	35	50	65	85	105
Violation of Rules	42	48	36	21	71	82
Misuse of Authority	39	39	21	20	19	20
Improper Language	45	34	8	5	6	5
Failure to Take Appropriate Action	23	29	20	12	12	14
Violation of Law	7	5	15	12	15	8

Source: Seattle Police Department Office of Professional Accountability
Annual Report Fall 2003

www.ci.seattle.wa.us/police/OPA/Docs/OPA_AR_03.pdf

In another example, the Charlotte-Mecklenburg police rely on their *Internal Affairs 2004 Annual Report* to inform the public about trends in civilian complaints against department employees. Below are just two of the many illustrations included in that report.

Complaints Events Received/Sustained			
	2003	2004	Change
Citizens Complaint Events	144	162	11%
Sustained Portion and % of Total	39 (27%)	30 (18%)	-9%
Department Complaint Events	237	243	2.5%
Sustained Portion and % of Total	200 (84%)	297 (81%)	-3%
Total Complaint Events	381	405	5.9%
Sustained Portion and % of Total	239 (53%)	227 (55%)	-7%



Source: Charlotte-Mecklenburg Police Department Internal Affairs
2004 Annual Report
www.charmeck.org/Departments/Police/Home.htm

Recommendations

On the basis of its assessment of federal consent decrees and MOAs as well as the preceding discussion, the IACP offers the following recommendations. The IACP reminds readers that the complaint process may be affected by the local laws and collective bargaining agreements under which a department operates.

The recommendations correspond sequentially with the goals of establishing a civilian complaint process, implementing the process, and remaining accountable to the community served and officers within the department.

Establishing a Clear Policy and Process

1. Establish clear policies and procedures for addressing civilian and internal complaints about officer misconduct.

These policies and procedures for handling civilian and internal complaints may be treated as a standalone section of the department's policy manual or may be embedded within other appropriate policy sections (e.g., internal affairs unit policy).

2. Establish, through policies and procedures, a clear central authority or authorities responsible for the investigation and resolution of misconduct allegations.

Depending on the size of the department, authority to investigate and resolve a complaint may be vested in an individual such as the chief, in the normal chain of command, in a specialized unit such as the internal affairs unit, or in some combination of the above. Depending on the size and organizational capacities of the department, different authorities and investigator processes may be in order for different classes of complaints. This authority or authorities should be clearly articulated in policy.

3. Classify complaints into different categories to ensure appropriate investigatory procedures.

Departments must clearly define the behaviors that constitute misconduct and must categorize these behaviors according to severity to ensure that an appropriate investigation of alleged misconduct occurs.

4. Establish open and accessible complaint filing processes.

Departments' complaint filing processes should not be so burdensome or complicated as to make civilians reluctant to file complaints. Departments should establish multiple means for filing complaints. These might include filing complaints in person, by phone, by fax, by mail, by e-mail, and via the Internet. Instructions and forms should be available in a clear format and in languages commonly in use by the population served.

5. Accept all allegations of misconduct by police officers from all available sources.

Although most allegations of officer misconduct will arise through civilian or internal complaints, departments should actively seek out and require reporting of information about officer misconduct from other sources including arrests of officers (particularly those that occur in other jurisdictions); criminal proceedings against officers; and private civil actions related to official conduct, whether on or off-duty. Officers should be required to report such information about themselves. Departments should establish agreements with local prosecutors and state attorneys who may provide notification of such proceedings. Departments should also be prepared to respond to misconduct allegations brought to light exclusively through the media.

Investigative Processes

6. Establish fair, thorough, and transparent investigatory processes.

Departments must establish processes that ensure a thorough, rigorous, unbiased, and timely investigation of every complaint. To implement such investigations, departments must devote adequate resources to the complaint process and specify reporting protocols and dispositional outcomes to be used at the conclusion of investigations.

7. Select and train investigators based on specific knowledge and skills that are necessary to conduct misconduct investigations.

Departments should not assume that persons who are skilled and experienced in criminal investigations are automatically qualified to conduct misconduct investigations. Although some skills may be transferable, other skills are unique to the misconduct investigation process. Officers investigating civilian complaints should be selected and trained based on skills and knowledge relevant to the specific duties associated with complaint investigations.

8. Policies and investigative practices should stress fairness and balance, both ensuring public confidence in thorough, unbiased investigations and a commitment to protecting officers against false complaints.

To maintain the trust and confidence of both the public department and personnel, investigations must be rigorous yet must protect their officers against false or fabricated allegations. Departments must take great care in distinguishing between fabricated allegations and those that could arise out of confusion or misunderstanding by the complainant. At a minimum, false accusations should be stricken from an officer's record and deleted from any early intervention or personnel assessment management system.

Accountability

9. Track and analyze complaints for the purposes of assessing overall performance and improving policies, procedures, and training.

Departments should fully integrate complaint data into a comprehensive data management strategy. For purposes of assessment, departments should consider complaint data, alongside citizen satisfaction surveys, community group meeting feedback, and ongoing dialogue with a wide cross-section of community leaders, as an indicator of citizen satisfaction with the department. Civilian complaint data must always be analyzed in context. For instance, departments might expect and even welcome a spike in complaints when policies or procedures are changed in order to make the complaint process more open and accessible to civilians. When comparing the number and type of complaints generated across units and across time, police managers must acknowledge and factor in such policy changes. Analyses of complaint data should continually inform department policies and community outreach efforts.

10. Make summary reports available to the public of complaint data analyzed by type, by disposition, and by time period.

By making such information available on web sites and/or through annual reports, departments will demonstrate the transparency of the civilian complaint process to their communities.

Conclusion

Given the nature of law enforcement interactions, complaints by civilians in the communities they serve and internal complaints raised by personnel within the department are a familiar occurrence in all agencies. Law enforcement leaders have a critical choice to make on how best to handle complaints. They may treat them as isolated events which need to be adjudicated. They may also assess complaint data from a broader problem-solving perspective by using complaint data to assess individual performance, unit performance, and as a barometer of the department's success in carrying out its customer-oriented mission. Sweeping complaints under the rug is not only an unethical practice; it also deprives managers of potentially useful information.

Many departments are incorporating complaint data into early intervention strategies or as part of a broader personnel management system. While paying careful attention to providing individuals unfettered access to the complaint process, departments must also ensure that they provide a process by which civilians can file formal commendations about police officers. Data on both complaints and commendations should be used for assessment purposes.

Suggestions for Further Reading

Law enforcement agencies respond to and process civilian and internally generated complaints in a wide variety of ways. The breadth and complexity of this issue extends beyond the issues addressed in this chapter. The following publications are recommended for further reading.

Bobb, Merrick. "Internal and External Police Oversight in the United States." Presentation from an international conference of police oversight at The Hague in October 2005. Police Assessment Resource Center, Los Angeles.
www.parc.info/pubs/index.html#issues

International Association of Chiefs of Police. Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs. Alexandria (Virginia): 2000. www.theiacp.org/documents/pdfs/Publications/policeaccountability.pdf

Walker, Samuel, Carol Archbold, and Leigh Herbst. Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders. Police Executive Research Forum, Washington, DC; 2002. www.cops.usdoj.gov/mime/open.pdf?Item=452

Walker Samuel. The New World of Police Accountability. Sage Publications Inc., Thousand Oaks (California): 2005

Endnotes

- ¹ Thurnauer, Beau. "Best Practices Guide for Internal Affairs: A Strategy for Smaller Departments." Big Ideas for Smaller Departments. Winter 2004. Chief Thurnauer, a 22-year veteran of the Manchester, Connecticut, Police Department, retired with the rank of captain in 1998. He currently serves as the chief of police in Coventry, Connecticut with a staff of 13 sworn officers.
- ² For the purposes of this chapter, discussion of law enforcement employment discrimination allegations are excluded. This should not be interpreted to mean that equal employment opportunity is not an important civil rights issue. Having personnel who are representative of the community they serve is a critical consideration addressed in Chapter 7 of this guide. This topic is omitted because it is an internal civil rights issue and not within the main purview of this document, protecting civil rights of community members.
- ³ Memorandum of Agreement Between the United States Department of Justice and the City of Cincinnati, Ohio and Cincinnati Police Department. (4/12/02). www.usdoj.gov/crt/split/Cincmoafinal.htm.
- ⁴ Commission on Accreditation for Law Enforcement Agencies (CALEA) standard 52.1.1.
- ⁵ The 2003 LEMAS survey did not break out university police, railroad police, and other special jurisdictional police as distinct types. Of the tribal police agencies included in the survey, 12 of 15 indicated that they did have a policy directive of citizen complaints, but the sample size for tribal police is not large enough to make reliable projections to all tribal police agencies or to compare across agency size.
- ⁶ *United States v. City of Pittsburgh* Consent Decree. (02/26/97). www.usdoj.gov/crt/split/documents/pittscomp.htm.
- ⁷ Agreement Between the United States Department of Justice and Buffalo City Police Department, the Police Benevolent Association, Inc., and the American Federation of State, County, and Municipal Employees Local 264 (9/19/02). www.usdoj.gov/crt/split/documents/buffalo_police_agreement.htm.
- ⁸ *United States v. City of Los Angeles* (6/15/2001). Available on the Web at www.usdoj.gov/crt/split/documents/laconsent.htm.
- ⁹ International Association of Chiefs of Police Model Policies. Standards of Conduct, August 1997.
- ¹⁰ Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department (06/13/2000). www.usdoj.gov/crt/split/documents/dcmoa.htm.
- ¹¹ Commission on Accreditation for Law Enforcement Agencies (CALEA) standard 52.1.5
- ¹² International Association of Chiefs of Police. Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs. Alexandria (Virginia): 2000. www.theiacp.org/documents/pdfs/Publications/policeaccountability.pdf.
- ¹³ International Association of Chiefs of Police. Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs. Alexandria (Virginia): 2000. www.theiacp.org/profassist/ethics/police_accountability.htm.
- ¹⁴ *United States v. City of Los Angeles* Consent Decree. (6/15/2001). www.usdoj.gov/crt/split/documents/laconsent.htm.

- ¹⁵ International Association of Chiefs of Police. Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs. Alexandria (Virginia): 2000. Boise Police Department reference available at www.theiacp.org/profassist/ethics/police_accountability.htm.
- ¹⁶ Missouri City (Texas) Police Department, Professional Standards. Last updated on 08/06/2002 Retrieved from www.iacpnet.com.
- ¹⁷ www.co.pg.md.us/Government/BoardsCommissions/pdfs/CCOP_2003-FY2004_Report.pdf
- ¹⁸ *United States v. City of Los Angeles* Consent Decree (6/15/2001). www.usdoj.gov/crt/split/documents/laconsent.htm.
- ¹⁹ *United States v. City of Pittsburgh* Consent Decree (02/26/97). www.usdoj.gov/crt/split/documents/pittscomp.htm.

V. *Managing Use of Force*



MANAGING USE OF FORCE

Police departments everywhere have no greater responsibility than to ensure that our officers, who are entrusted by the public to use force in the performance of their duties, use that force prudently and appropriately. In addition, when deadly force is used, police departments have a solemn obligation—to the public and to the officers involved—to investigate these cases thoroughly, accurately and expeditiously.¹

Chief Charles Ramsey, Washington, DC Metropolitan Police Department

Introduction

Occasionally, a use-of-force incident can catapult an individual officer, a whole department, or the entire law enforcement profession into headline news. The mere mention of Rodney King, Amadou Diallo, or Abner Louima, for instance, illustrates the serious concerns that these events can raise in the public forum. Highly visible incidents such as these have an enormous impact not only on the individuals involved, but also on their departments and on law enforcement in general. The unjustified use of force or the use of force that fails to comply with established policy standards damages lives, erodes confidence in the police, destroys careers, and exposes individual officers, departments, and municipalities to substantial civil liability. Individual officers also may be held criminally liable. If excessive force appears to be systemic, it may expose the department to a federal *pattern or practice* investigation.

The law enforcement profession may feel confident, however, in the fact that the use of force—let alone the misuse of force—among police officers is a remarkably rare occurrence. Two large-scale prevalence studies—one based on voluntary submission of police data² and one based on a representative national sample survey of the public³—found that the use of physical force on the part of officers occurred in less than 1 percent of police and citizen encounters.

Given the fact that most routine police encounters are not confrontational, some suggest that the ratio of use of force to arrests is a more appropriate and revealing standard. A study examining 7 years of data from the Montgomery County (Maryland) police departments found a rate of 6.4 force incidents per 100 adult custody arrests, which, as the authors note, is infrequent considering the context.^{4,5}

In his review of research on use of force, University of Central Florida Professor Kenneth Adams observes, “whether measured by use-of-force reports, citizen complaints, victim surveys, or observational methods, the data consistently indicates that only a small percentage of police-public interactions involve the use of force.”⁶ Thus, data collected by police departments and backed by scholarly research make clear that the overwhelming majority of police-citizen contacts are carried out routinely with no use of physical force.

Still, police executives have the responsibility—both to their communities and to their officers—to effectively handle the small, but serious number of instances in which force is

misused. A small percentage of police encounters with the public involve excessive use of force or force without cause. Some officers occasionally stumble into a misuse of force. A small number of officers repeatedly exercise poor judgment or willful disregard for use-of-force policies. Police executives must work to limit such incidents. They must ensure that use of force is kept to a minimum, that excessive force is not tolerated, and that any allegation of excessive or unlawful force is thoroughly investigated.

To this end, a police executive's ability to manage use of force through clear policies, effective training, and sound management is of paramount importance. Through these tools, police executives must require officers to limit their use of force to that which is reasonably necessary for effective law enforcement and for the protection of officers and civilians. As a result, the public should be able to expect that police officers will use force only to the extent necessary to achieve lawful law enforcement objectives and never as a method of retaliation or as an outlet for frustration. Police executives are also responsible for assuring that proper accountability mechanisms are in place. Police executives, appropriately, should track agency patterns in use of force and offer proper intervention or disciplinary action for officers found to have engaged in unlawful use of force.

Finally, police executives must be prepared to respond in highly visible moments when officers have been accused of excessive use of force or force without cause. What police leaders say and do in these moments has a tremendous effect on the public's response as well as on the morale of rank-and-file police officers. In response to any incident involving an excessive use-of-force allegation, a police executive must balance concern for the public with concern for officers. The chief must ensure that the incident will be investigated thoroughly and fairly while avoiding pressure from either side to rush to judgment. Only in this way will the chief sustain the confidence of the department and the community that the department serves.

Chapter Overview and Objectives

This chapter addresses law enforcement leaders' management of the use of force within their departments. Although teaching officers to use force to ensure their own and others' safety and to respond to resistance is an ongoing and critical responsibility, this chapter is not meant to be a primer on use-of-force techniques. Instead, it focuses on the tremendous responsibility that law enforcement officers bear as a result of their authority to use force. Law enforcement leaders must remain vigilant in assisting officers to manage this awesome responsibility if citizens' civil rights are to be protected.

Accordingly, this chapter begins with an investigation of the way in which force is discussed and defined in law enforcement agencies. It explores various levels of force—from the implied force of an officer's presence to deadly force—as well as the reliance on use-of-force continuums to aid officers in their efforts to know when and with what level of force to respond to any given circumstance.

The chapter proceeds from this groundwork to explore four core components of effective use-of-force management. The chapter asserts that every law enforcement leader must design a clear and comprehensive use-of-force policy, implement training that both hones officers' skills in using force and offers them alternatives to this use, maintain accountability mechanisms to ensure that excessive force or force without cause is not tolerated, and establish media and public relations outreach strategies before any critical use-of-force incident threatens to distance the department from the community it is sworn to serve. By combining proper use-of-force policies, training, accountability mechanisms, community outreach, and public relations strategies, law enforcement leaders can effectively limit individual, departmental, and municipal liability while promoting confidence and trust among their own rank-and-file officers and community members. To promote these ends, the chapter concludes with a series of recommendations.

Issues in Defining Use of Force

Discussions of the use and misuse of force revolve around common phrases that are consistently used but not always uniformly defined. The following discussion is intended to clarify these terms for the purposes of this guide.

Use-of-Force Definitions in Context

While use of force is a common phrase in law enforcement and in scholarly research such as the studies mentioned in the chapter introduction, the meaning of the term can be ambiguous. It is best understood in the particular contexts in which it is used.

In the context of departmental policy directives, use of force as a general term is rarely defined. Instead, these policies define at least two classes of force: deadly force (often referred to as lethal force) and nondeadly force (sometimes called nonlethal or less-lethal force). These policies then stipulate the use of various weapons, equipment, and techniques that fall under these two general headings.

In the context of training, departments often do define use of force; generally, they define the phrase rather broadly. Many departments expressly stipulate that all police encounters or at least involuntary police contacts such as traffic stops, pedestrian stops, and arrests imply some sense of force. Under this broad conceptualization of the issue for purposes of training, use of force is seen as a graduated continuum that ranges from the mere presence of an officer—implied force—to the use of deadly force options. This use-of-force continuum as a training tool will be discussed in greater detail below.

Outside the training room, however, the use of force generally is defined more narrowly to refer to specific actions that are over and above an agency defined threshold and excludes the type of routine activities that occur during arrest and other encounters. In this sense, force is seen as a response to subject resistance. The following excerpt from the memorandum of agreement between the Department of Justice and the Detroit Police Department provides a summary of the term as it commonly is understood from an operational law enforcement perspective:

The term “force” means the following actions by an officer: any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of firearms; the use of chemical spray, choke holds, or hard hands; the taking of a subject to the ground; or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance. Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other person.⁷

Deadly and Nondeadly Force

Virtually all policy directives focused on the use of force draw distinctions between deadly and other types force. Deadly—or lethal—force generally is construed as any action that is readily capable of causing death or serious physical injury. According to a federal memorandum of agreement in effect in Washington, D.C., “the term ‘deadly force’ means any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.”⁸ Other federal agreements use very similar definitions. It is important to note that the implication of many of these definitions is that death or serious injury need not be the intended outcome, just a possible outcome of the force used. For instance, some departments define warning shots and choke holds as deadly force.

By definition, all other uses of force are considered nondeadly—or less-lethal—uses of force. Some departments define nondeadly force by specifying the instruments, weapons, and techniques that fall under this category. These might include specific references to batons, flashlights, chemical agents, conducted energy device (CED) and canine deployments. A CED is sometimes referred to as an electronic control weapon (ECW) or a Taser™, a name of one well-known manufacturer.

Debates regarding distinctions between deadly and nondeadly uses of force certainly exist. Differences of opinion exist on terminology to describe the general types of force, and departments struggle to determine where certain techniques should be placed. The use-of-force continuum is useful in this context. A graphic teaching tool, it can be used to illustrate the distinctions between deadly and nondeadly force options.

A Note on Terminology Used in this Guide

In policies, training, and general discussions, various terminologies are used in distinguishing between two categories of force. Consistent with IACP's model policy on use of force,⁹ this guide uses the terms *deadly* and *nondeadly* force, except when using specific terms from quoted or referenced sources. One article suggests this distinction is more consistent with legal standards and less ambiguous than others. "Fourth Amendment law speaks of two categories of force: deadly and nondeadly. The term 'less-lethal' potentially confuses the fact that electronic control weapons, appropriately used, are by definition nondeadly force devices. It also suggests that the use of electronic control weapons is questionable in anything but deadly force situations."¹⁰

The term "Taser" refers to one particular manufacturer. Besides Taser, however, there are other manufactures such as StingerTM. Although generic terms are being used in lieu of common brand names, these have varied and perhaps add to the confusion. Generic terms include conducted energy devices (CEDs), electro-muscular-disruption-technology (EMDT), and occasionally stun guns. Taking the lead from a recent publication of training guidelines that were developed by the Police Executive Research Forum (PERF) in consultation with law enforcement professionals this guide uses the term conducted energy device or CED.¹¹ Other terms are used when directly referencing or quoting terms used by other sources.

Reasonableness of Force

In general, legitimate force is described as those "reasonable" actions that are necessary to protect persons or property from illegal harm or to bring about obedience to a valid police order. Stemming from the Fourth Amendment, reasonableness is the legal standard that must guide the decision to use force and the amount of force used. This standard of reasonableness has several implications. One is that an officer is permitted to use the amount of force necessary only to overcome the resistance or aggression that is presented by the subject. In addition, when the resistance or the aggression of the subject is reduced, the officer(s) must reduce his or her force correspondingly. The consent judgment between the Department of Justice and the Detroit Police Department invokes the reasonable-force standard in describing

legitimate uses of force: “Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other person.”¹²

Understanding two additional legal inferences about the standard of reasonable force is important. First, reasonableness is not assessed from hindsight, but is based on “careful attention to the facts and circumstances of each particular case” and as would be seen from the perspective of a reasonable officer responding to the particular case.¹³ Second, in assessing reasonableness, courts have been deferential to the reality that officers are making split-second decisions under difficult circumstances.¹⁴

Excessive Force

In general, excessive force is defined as being unlawful force or force that exceeds the appropriate thresholds defined by a department’s policy directives. The standard for distinguishing excessive force from allowable force is, as discussed above, the standard of reasonableness. Policy directives generally note that the standard of reasonableness is based on the perspective of the officer on the scene at the time the force decision is being made. The following excerpt from a sample policy from the Virginia Department of Criminal Justice Services is representative of an excessive-force definition based on this legal standard and helps ground the legal terminology in a clear operational context.

Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. In determining whether force has been excessively applied, the primary concern is whether the on-scene officer reasonably believes that its application was necessary and appropriate. Based on the reasonableness standard, excessive force may be determined based on:

1. The severity of the crime.
2. The nature and extent of the threat posed by the suspect.
3. The degree to which the suspect resists arrest or detention.
4. Any attempts by the suspect to evade arrest by flight or fight.

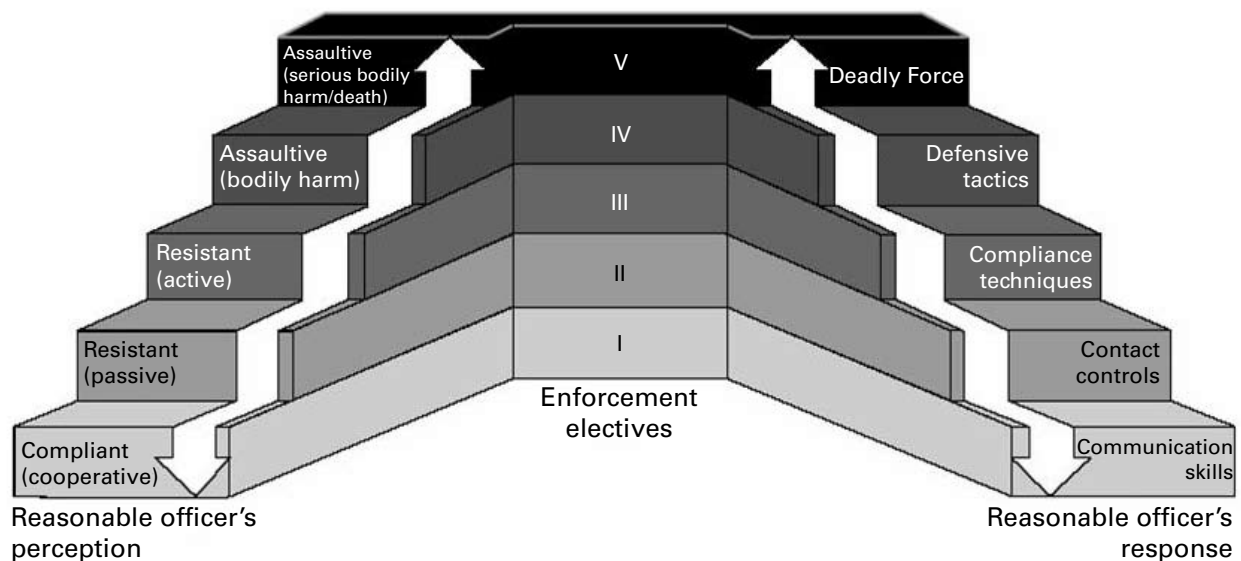
In evaluating the reasonable application of force, officers must consider their own age, size, strength, skill level with department weapons, state of health, and the number of officers relative to the number of suspects.

This and other similar directives are necessary for providing context and establishing parameters for proper conduct. It would be impractical, however, for officers to perform the detailed mental checklist suggested in the language when dealing with exigent circumstances in the field. The use-of-force continuum is offered in many departments as a practical way to train officers to assess situations and from which to make force decisions in the field.¹⁵

Use-of-Force Continuum

In their day-to-day work, police officers must make difficult, split-second decisions about whether to use force and what level of force to use. These decisions must be consistent with departmental policy and legal standards. Written departmental policies taken by themselves can be vague and difficult for officers to apply in the field. As a result, many departments have used a use-of-force continuum—a tool that helps officers visualize variations in levels of force—as a means of clarifying written policies. Indeed, most departments use a use-of-force continuum in training, and many departments now explicitly incorporate a use-of-force continuum into their departmental policy.

Several examples of use-of-force continuums/matrices are presented below:



Level of Threat	Corresponding Force
(1) Compliant (blue level)	Communication, such as verbal commands
(2) Passive resistance (green level)	Low-level physical tactics, such as grabbing a suspect's arm
(3) Active resistance (yellow level)	Use of come-along holds, pressure points, and chemical sprays
(4) Assaultive with the potential for bodily harm (orange level)	Defensive tactics, such as striking maneuvers with the hands or a baton
(5) Assaultive with the potential for serious bodily harm or death (red level)	Deadly force

Image of Federal Law Enforcement Training Center (FLETC) Use-of-Force Model.
From GAO/GGD=96-17 ATF Use of Force, page 39



RECOMMENDED RESPONSE TO RESISTANCE MATRIX



RESISTANCE LEVELS

6 Aggressive Physical	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5 Aggressive Physical	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4 Active Physical	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3 Passive Physical	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2 Verbal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1 Presence	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Arrival	Interview Stance	Dialogue	Verbal Direction	Touch	Restraint Devices	Transporters	Take Downs	Pain Compliance	Counter Moves	Intermediate Weapons	Incapacitation	Deadly Force	
	Officer Presence		Communication			Physical Control					Intermediate Weapons	Incapacitating Control	Deadly Force	
	1		2			3					4	5	6	

Checked areas represent authorized, acceptable beginning response levels.

Checked areas represent authorized, acceptable beginning response levels. Any response in an unchecked area requires explanation. [Refer to definitions for each level of resistance and response.](#)

RESPONSE LEVELS

Image from the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Criminal Justice Standards and Training Commission
Defensive Tactics Curriculum, Legal and Medical Risk Summary
June 2002, Page 4 (supplied by the Tallahassee Police Department).

DPSST Force Continuum					
Level of Force		Method of Force		Level of Resistance	Threat
VI	Deadly	Any force readily capable of causing death or serious physical injury		Lethal	R E S I S T I V E
V	Serious Physical Control	Neck Restraint Impact Weapon Focused Blows Mace (CN/CS)	O C R E S T R A I N T S	Ominous	
IV	Physical Control	HairTakedown JointTakedown Digital Control Joint Come-along Pressure Points Electronic Stun Device Temp. Restraints		Active Static	
III	Physical Contact	Escort Position Directional Contact		Verbal	
II	Verbal Communication	Direct Order Questioning Persuasion			
I	Presence	Display of Force Option Body Language/Demeanor Identification of Authority		None	Complying

Image from the Oregon Department of Public Safety and Training Standard (DPSST).
 Obtained from Portland State University Public Safety Office web site
www.cpsso.pdx.edu/html/forcepolicy.htm

Origins and Evolution of Use-of-Force Continuums

The use-of-force continuum originated in the early 1980s. The first continuum was a line with officer presence or verbal commands at one end and deadly force at the other. The continuum has now seen countless revisions and adaptations. While no single use-of-force continuum has been universally accepted, some states such as Florida and Oregon have either adopted or recommended a continuum for statewide use. This tool is not without its detractors, but while its effectiveness in various forms has been debated, and will continue to be debated, it is a widely used training tool and the foundation of many—if not most—departments' use-of-force policies.

Several Department of Justice investigations, consent decrees, and memorandums of agreement (MOA) address the use-of-force continuum. The federal MOA for the Washington, D.C., police, for instance, requires that that department continue to use its continuum and incorporate it as part of its academy and annual training. In its consent decree, the Detroit Police Department is required to revise its use-of-force policy and continuum to meet the following stipulations:

The use-of-force policy shall incorporate a use-of-force continuum that:

- a. identifies when and in what manner the use of lethal and less than lethal force are permitted
- b. relates the force options available to officers to the types of conduct by individuals that would justify the use of such force
- c. states that de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units are often the appropriate response to a situation.¹⁶

Benefits and Drawbacks of the Use-of-Force Continuum

Proponents of the use-of-force continuum maintain that it is a practical training tool that helps officers make decisions that effectively balance safety considerations with individual rights. Proponents argue that in conjunction with proper training—scenario training and shoot-don't-shoot training—the use-of-force continuum enables officers to make sound decisions quickly. They also argue that the use-of-force continuum is a useful tool during post-incident reviews and investigatory interviews where it can help the officer and investigators articulate what level of force was used and why that level of force was necessary under the circumstances. Proponents also note that the continuum has proven to be a useful tool in court where it can help juries understand the standards by which officers operate in making use-of-force decisions.

While many feel that the continuum's advantages are clear and obvious, others have questioned its usefulness in real-life situations. Some have voiced concerns, for instance, that training and responses based on a rigid matrix, in which lower level force options must be ruled out before higher level options can be used, are unrealistic.¹⁷ These critics contend

that in real-life encounters where serious threats or levels of resistance must be met with suitable force in a timely manner, the use-of-force continuum can cause officers to hesitate and thus put the officer, fellow officers, and by-standers in jeopardy. Critics also contend that real-life encounters are far more complex than the continuum implies and that use-of-force continuums too often fail to incorporate adequately important issues such as disengagement, de-escalation, or other cooling-off strategies.

An alternative to the use-of-force continuum is the circular situation force model that is common in the United Kingdom and Canada, and gaining popularity in the United States. In a glossary included in a publication on policy and training guidelines relevant to conductive energy device guidelines by the PERF Center on Force and Accountability, this model is described as follows:

A circular force training model that promotes continuous critical assessment and evaluation of a force incident in which the level of response is based upon the situation encountered and level of resistance offered by a subject. The situational assessment helps officers determine the appropriate force option, ranging from physical presence to deadly force.¹⁸

Selecting a Use-of-Force Continuum

With so many use-of-force continuums—ranging from the very simple to the complex—available for adoption or modification, law enforcement executives must make careful and deliberate decisions. While law enforcement leaders may find it tempting to simply adopt another agency's continuum or a model continuum, they must take the steps to ensure that the selected use-of-force continuum is tailored to their agency. In the process of developing a continuum or adopting and then tailoring a continuum to their own needs, several considerations are especially important from a civil rights perspective.

- The use-of-force continuum should match the department's actual use-of-force options. It should include all techniques, nondeadly weapons, and deadly weapons available to department personnel. It should include standard-issue weapons that are made available to all officers, as well as weapons that are made available only to specialized units like the SWAT team.
- The use-of-force continuum should clearly demonstrate where each weapon and technique fits onto the continuum's graduated scale and match this scale to levels of subject resistance and actions.
- If an agency uses canines in any effort to control or apprehend suspects or other subjects, that canine deployment should be placed on the continuum. Distinctions should be made about whether a department uses a "find-and-bark" strategy, a "find-and-bite" strategy, or both. Such distinctions may be important in accurately placing the use of canines on the use-of-force continuum.

- As departments adopt CEDs, beanbag guns, and other weapons being developed at a rapid pace and marketed as nondeadly options by vendors, they must make careful and deliberate decisions regarding where to place these technologies on their use-of-force continuums. Placement must depend on the particular manner in which a tool will be deployed within the particular department. For instance, some departments have opted to allow CEDs to be used only when other forms of deadly force would be justified while other departments' policies stipulate that CEDs can be used as a nondeadly option, at a level similar to pepper spray.

CEDs: Decisions Regarding Deployment

The deployment of Conductive Energy Devices (CEDs) has become one of the most hotly debated topics in law enforcement. News regarding sudden and unexpected deaths following CED deployments has brought the issue to the public's attention.

The safety and viability of CEDs as a use-of-force option is fiercely contested. In a recent study, Amnesty International reported that 74 in-custody deaths have occurred since 2001 as a result of CED-related incidents (November 2004). That study recommended suspending the use of these devices until more information is provided on safety, standards, training, and medical protocols. On the other hand, many of the more than 5,000 police departments that have deployed CEDs have documented substantial drops in officer and subject injuries, thus reinforcing manufacturer claims that CEDs offer an effective nondeadly use of force when used within the context of proper policies, procedures, and training.

In response to the need for more definitive information on the use and management of these devices, the IACP has published an executive brief, *Electro-Muscular Disruption Technology: A Nine Step Strategy for Effective Deployment*. This brief offers a step-by-step guide to aid law enforcement agencies in selecting, acquiring, and using the technology. The full text of the report is available on IACP web site¹⁹ (www.theiacp.org/research/RCDCuttingEdgeTech.htm).

While the full report provides a comprehensive guide for law enforcement agencies to develop their own strategies for CED deployment, some basic considerations, especially regarding community relations and accountability, are important enough to review here.

The Nine Step Strategy

1. Building a leadership team with members who can address issues relative to acquisition, costs, policies, training, liability, and evaluation.
2. Placing CEDs on the use-of-force continuum.
3. Assessing the costs and benefits of using CEDs.
4. Identifying roles and responsibilities for CED deployment.
5. Engaging in community outreach.
6. Developing policies and procedure for CEDs.
7. Creating a comprehensive training program for CED deployment.
8. Using a phased deployment approach for CEDs.
9. Assessing CED use.

Community Relations

Departments must consider the potential impact on community relations in its cost-benefit analysis. An agency decision to include CEDs as a force option will elicit a reaction in many communities, even if they concur that the device falls under the category of nondeadly force. If the community believes that a department has a history of using excessive force or is racially biased in its use of force, it would behoove that department to seek input from community stakeholders as part of the decision-making process. Proactive outreach on the part of the department and regular meetings with the community can build mutual trust and respect.

Accountability

Departments must consider any CED deployment as a use of force that is both reportable and reviewable by the chain of command. CED use should be documented and assessed as part of the agency's early intervention strategy. CED usage should also be part of a data-driven management strategy in which both the pluses and minuses of the tool and of the manner of deployment are continually evaluated.

Evaluation

Departments evaluating their deployment of conducted energy devices must ask the following key questions:

- Does the deployment of CEDs correspond to decreases in officer and suspect injuries, or the extent of injuries?
- Does deployment result in greater or lesser overall use-of-force incidents within the department? Is there any evidence to suggest the CEDs are being used in instances where no physical use of force would have been used before this tool became available?
- Does deployment result in increases or decrease in use-of-force complaints?

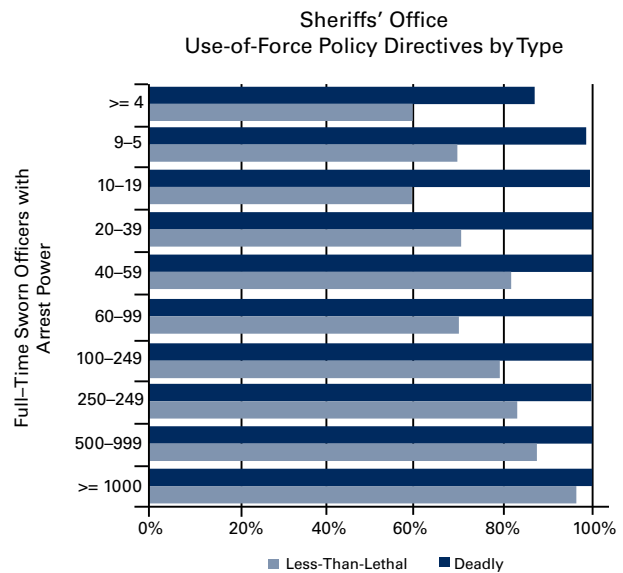
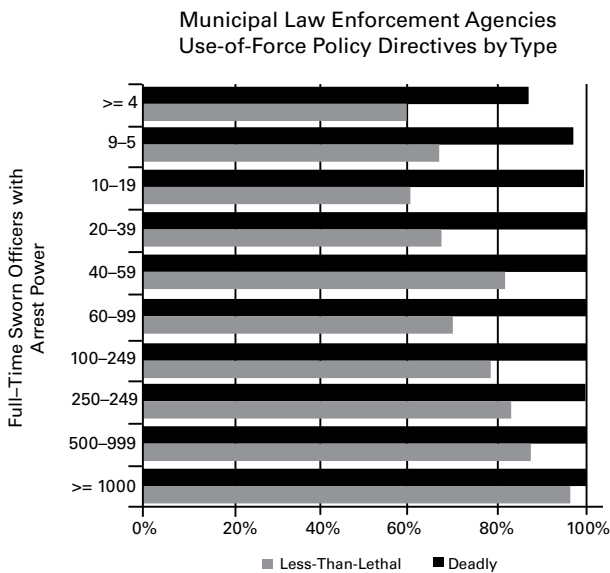
Although answers to these questions are beginning to emerge from analyses within individual departments, no systematic research has yet been conducted. Law enforcement leaders should note that the results of departmental evaluations will depend on the particular policies, strategies, and types of deployments unique to particular departments rather than on the qualities inherent in the CED tool itself. Considering that these tools are relatively new, are controversial in the public forum, and that no consensus yet exists about the best methods of deployment, law enforcement leaders must remain vigilant and continually assess their departments' deployments of CEDs in light of evolving standards.

Near Universal Prevalence of Use-of-Force Policies

The need for use-of-force policies in law enforcement is widely accepted. The Commission on Accreditation for Law Enforcement Agencies (CALEA) has promulgated accreditation standards as part 1.3 of its Law Enforcement Role and Authority Chapter. In 1989, the IACP issued its first model policy and concept paper on use of force. That policy was last updated in February 2005.²⁰ Other professional agencies and associations, as well as numerous state organizations, also have developed model policies.

Based on 2003 Law Enforcement Management and Administrative Statistics (LEMAS) census data (and reflecting terminology from a data-collection instrument), the vast majority of municipal police departments and sheriffs' offices have policies on the use of *deadly force and less-than-lethal force* (specific terminology from LEMAS questionnaire). Details about LEMAS methodology and data are available in the text box on page 31 in Chapter 2.

As the charts below reveal, although a smaller percentage of municipal departments and sheriffs' offices have "a written policy directive on *less-than-lethal force* than have a policy on *deadly force*, the clear majority of all agencies, regardless of size, have policies for both categories of force. These charts use the terminology for force categories that are used in the LEMAS survey instrument.



Evolutions in Use-of-Force Policies

While almost universally implemented, specific use-of-force policies still vary by jurisdiction and continue to change over time. As noted above, use-of-force policies evolved to incorporate use-of-force continuums in the 1980s. More recently, federal consent decrees and memorandums of agreement (MOA) have required departments to modify their policies, training, and accountability mechanisms to better ensure the protection of civil rights. Departments have also adjusted use-of-force policies in response to other factors, including civil suits and court settlements. Many departments have adjusted, and continue to adjust, their policies to conform to evolving professional standards or in direct response to particular incidents that have raised legal issues or heightened public concern.

Core Components of Effective Management of Use-of-Force

The authorization to use force is an awesome power that carries with it a tremendous amount of responsibility. For all the variability in the tone and language of use-of-force policies, departments have discovered that certain core components within these policies will result in the effective limitation of use of force, strict accountability, and the effective response to incidents in which force is misused.

As noted above, police officers must use force only when reasonably necessary and must use only the amount of force necessary to overcome resistance or to achieve compliance with the law. As clear as this imperative is, the decision to use force and the judgment of the proper level of force can be difficult and complex. When making use-of-force decisions, officers must simultaneously address their own safety, the safety of surrounding persons, and the well-being and civil rights of the subject.

Of course, the difficult and delicate nature of these decisions makes the need for clear policies, effective training, strong supervision, and strict accountability absolutely paramount. When officers are involved in emotionally charged and potentially violent encounters, the combined influence of policies, training, and accountability are critical. Indeed, assurance must be made that these elements must be integrated and consistent to best ensure that officers respond in a reasoned and disciplined manner.

This chapter asserts that use of force can be managed as a law enforcement strategy, while still protecting civil rights, if law enforcement leaders take care to establish policies and practices (1) that are comprehensive; (2) that carefully consider and alternatives to use of force and consideration of special circumstances and persons; (3) that incorporate strong accountability mechanisms; and (4) that are attentive to public and media relations. The following sections discuss each of these components in more detail and lay out some of the key elements that have been addressed in the consent decrees and MOAs as key issues relating to civil rights.

Component One: Comprehensiveness

To effectively manage the use of force, departments must establish use-of-force policies that clearly address all force techniques and technologies available to their officers. They must also consider the broad range of issues related to those deployments.

Use-of-force policies succeed as they clearly establish their departments' expectations regarding each and every force option available to officers. This is especially critical as departmental policies evolve in response to civil rights concerns. The following paragraphs address several use-of-force options and issues that have direct implication on civil rights concerns. Where relevant, these paragraphs include language from federal consent decrees and MOAs and department policies.

Verbal Warnings

Use-of-force policies increasingly incorporate a discussion of verbal warnings. Encouraging the use of verbal warnings before the deployment of force reinforces the commitment to ensuring that the use of force is no greater than necessary to ensure public and officer safety. Policies generally stipulate that verbal warnings should be issued when appropriate and possible, but should never compromise the safety of officers or of the public. Several federal agreements stipulate the use of verbal warnings prior to the deployment of particular use-of-force options. The MOA with the Cincinnati Police Department requires using a verbal warning, when feasible, before beanbag shotguns or foam rounds are used. This MOA also requires that a "loud and clear announcement" be made before canines are released. The federal agreements with the Cincinnati, District of Columbia, Detroit, and Prince George's County (Maryland) Police Departments require, with limited exceptions, that verbal warnings be issued before the deployment of chemical or Oleoresin Capsicum (OC) spray. The excerpt from the agreement with the District of Columbia's Metropolitan Police Department is illustrative:

The policy shall require officers to issue a verbal warning to the subject unless a warning would endanger the officer or others. The warning shall advise the subject that OC spray shall be used unless resistance ends. The policy shall require that prior to discharging the OC spray, officers permit a reasonable period of time to allow compliance with the warning, when feasible.²¹

When verbal warnings are issued, it is also imperative that they be appropriate to the circumstances. They must be delivered with clarity and forcefulness. Although these types of warning typically are made during exigent circumstances, officers should maintain their professional demeanor to the extent possible. They should avoid profanity or language that is disrespectful or demeaning to the subject.

Warning Shots

Use-of-force policies also are increasingly addressing warning shots. A search of policies submitted to IACPNet revealed 15 departments that address “warning shots” in their policy directives. All but two of these departments prohibited warning shots under any circumstances. Increasingly, agencies are prohibiting warning shots altogether or narrowly limiting the circumstances in which they are allowed. The policy of the Savannah-Chatham (Georgia) Metropolitan Police Department is illustrative of a narrowly defined exception for allowing the use of warning shots:

Warning shots are forbidden with the only exception being the Marine Patrol Unit and under the following circumstances:

- Warning shots may be used for mission accomplishment (e.g., to compel a non-compliant vessel to stop as a security measure in Homeland Security defense).
- Warning shots are a signal to a vessel to stop, for waterway security zone incidents involving terrorist attacks and may be fired only by Marine Patrol personnel who are trained in the use of rifles. The use of warning shots will not endanger any person or property, including persons aboard a suspect vessel and warning shots shall not be fired over land.

Source: Savannah-Chatham (Georgia) Metropolitan Police Department
Agency Profile: Population 198,000; Officers 575

Choke Holds

Federal agreements and use-of-force policies that address choke holds acknowledge the seriousness of this use-of-force option. The use of choke holds—or similar procedures such as carotid control holds—has long been a topic of debate. The purpose of the technique is to incapacitate an aggressive subject temporarily to gain control of the situation. But because of the risk involved with these techniques—they are intended to restrict the airflow through the windpipe or flow of blood to the brain—some departments have prohibited them outright, while others have narrowly defined the circumstances under which they can be used. Most departments that allow this option classify the choke hold as deadly force. Federal agreements underscore this definition and advocate the restrictive use of choke holds. In relevant consent decrees and MOAs, the Department of Justice states that departments’ policies should “explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.”²² The policy of the Des Moines (Washington) Police Department, for instance, underscores the seriousness of this use-of-force option:

The choke hold shall be considered deadly force and officers will use this hold only in defense of human life. Anytime this hold is used, an officer’s report will be submitted.

Source: Des Moines (Washington) Police Department
Agency Profile: Population 29,267; Officers 43

Canine Deployments

Use-of-force policies address canine deployments in detail. Some departments use dogs to help establish subject compliance as well as to apprehend dangerous or fleeing suspects or escapees. As with other uses of force, canine deployments must be based on balancing the risks inherent in their use against the risks that arise in the absence of their use. In all instances, canine deployments should be attended by strict selection, training, and accountability measures that apply to both handlers/trainers and dogs. The Manchester (Connecticut) Police Department policy explicitly addresses canine deployments:

Use of Force

1. The use of specially trained police canines for law enforcement responsibilities constitutes a real or implied use of force. The police officer/handler may only use that degree of force that is reasonable to apprehend or secure a suspect, protect him/herself, protect another officer and/or a civilian as governed by General Order 1-6 Use of Force. The police officer/handler shall file the appropriate reports documenting the use of force as required by General Order 1-6 Use of Force.

2. The police officer/handler and other officers shall adhere to the following levels of force when protecting the canine.

a. The use of Less Lethal Force may be used to protect the canine from an assault or attempted assault.

b. The use of Lethal Force shall not be used to protect the life of the canine. The canine is a piece of equipment utilized by the police officer/handler.

c. The police officer/handler may use the canine in preventing the infliction of less lethal and lethal force against him/herself, another officer and/or civilian.

3. Canine warning

a. The canine warning should consist of the following or similar announcement:

“This is the Manchester Police Canine team, speak to me now/stop now or I will send the dog.”

b. The police officer/handler shall deliver a series of warnings to ensure that the suspect has had ample warning, that the canine shall be used to apprehend him/her.

c. A warning allows the suspect time to surrender and shall also alert any innocent persons in the same area of the canine’s teams’ presence and intention.

d. The canine warning should not be given when, in the opinion of the handler, doing so would cause undue risk to the canine team's presence and intention.

e. At NO time shall the canine team's police officer/handler use his/her canine to affect the arrest of a person(s), who cannot escape or resist the officer, nor to intimidate, coerce or frighten the suspect(s).

Source: Manchester (Connecticut) Police Department
Agency Profile: Pop. 52,500; Officers 119

Discharging Firearms at or from Moving Vehicles

Increasingly, use-of-force policies specifically address the issue of shooting at or from moving vehicles. Most policies prohibit these acts altogether or strictly limit the circumstances in which such shooting is justified. A sample directive from the Virginia Department of Criminal Justice Services addresses this issue:

Firing at a moving vehicle is prohibited except where the officer reasonably believes that:

(1) An occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; OR (2) A vehicle is operated in a manner deliberately intended to strike an officer or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the officer's action.²³

Police training must stress that one clear option in response to moving vehicles is for the officer to evade the car. Courts have used the criterion of whether the officer had an opportunity to move out of the way as a factor in determining the reasonableness of force.²⁴

Pursuits

Departments have been increasingly careful to consider the advisability of pursuits from a cost-benefit perspective. A variety of broad concerns including public safety, officer safety, fiscal liability, and civil rights, have refined the circumstances in which departments will deploy this use-of-force option. Indeed, pursuit policies and practices have evolved tremendously over the last several decades. Pursuits that would have been initiated years ago based on so-called "contempt of cop" motivations have been significantly curtailed by recent policies and training that stress alternative responses. While curtailing pursuits is often seen as a safety and civil liability issue, the topic raises issues of reasonableness as well as equal protection. Pursuits have been specifically addressed in several of the federal consent decrees and MOAs.

Vehicle Pursuits

The most recent data available from the Bureau of Justice Statistics (BJS) reveals that approximately 95 percent of law enforcement agencies have policies on vehicle pursuits. Law enforcement agencies have long recognized that vehicle pursuits are dangerous, high-liability events. A substantial percentage of police pursuits end in crashes.²⁵ High-visibility pursuits that end with injuries or property damage can undermine public trust and confidence. Vehicle pursuits also raise considerable risks of fiscal liability. Officers in car chases may experience the phenomena of “adrenaline rush” that clouds their judgment. Additionally, when pursuits within a particular jurisdiction overwhelmingly involve minority drivers, they can also heighten the perception that racial profiling is taking place.

The BJS survey revealed that 59 percent of law enforcement agencies have “restrictive” policies. These policies limit officers from using pursuit unless specific criteria such as seriousness of offense, safety, or fleeing-vehicle speed are met. The following policy excerpt from the Illinois State Police is representative of those that would be described as restrictive in the BJS survey terminology:

[The Illinois State Police] will initiate a motor vehicle pursuit *only* [emphasis added] when an officer has an articulable reason to believe the occupant(s) of a fleeing vehicle has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates they will endanger human life or inflict great bodily harm unless apprehended without delay. All officers involved in a pursuit must, at all times, be able to justify their reasons for the pursuit.

Source: Illinois State Police Directives Manual
Agency Profile: Pop. 12,713,634; Officers 2,089

Other agencies that have not developed restrictive policies are nevertheless increasingly attentive to the need to balance the capture of suspects fleeing in vehicles with the need to protect both the public and police officers from unnecessary risks. The BJS survey cited above revealed that 27 percent of agencies have “judgmental” policies that leave the decision up to the discretion of the officer. In BJS survey terminology, the IACP’s model policy would be described as a judgmental or discretionary policy. It explicitly recognizes that vehicle pursuits are inherently dangerous and that the risks of pursuit must be weighed against the risks of not apprehending the subject:

The decision to initiate pursuit must be based on the pursuing officer’s conclusion that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.²⁶

Foot Pursuits

Foot pursuits appear less frequently in use-of-force policies than vehicle pursuits. Although the risk of collateral damage may not be as high, foot pursuits do have attendant risks and civil rights implications. Officers are often injured during foot pursuits and, at the time of capture, can experience the phenomena of “adrenaline rush” which can cloud their judgment and diminish their capacity to react with appropriate restraint. Thus, foot pursuits require careful consideration as a policy and training issue.

As a result of pattern and practice investigations, the Cincinnati Memorandum of Agreement and the Detroit Consent Judgment each enjoined the departments to develop policies specific to foot pursuits. The Cincinnati MOA required the following:

The CPD will develop and adopt a foot pursuit policy. This policy will require officers to consider particular factors in determining whether a foot pursuit is appropriate. These factors will include, inter alia, the offense committed by the subject, whether the subject is armed, the location (i.e., lighting, officer familiarity), and the ability to apprehend the subject at a later date. The policy will emphasize alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements.²⁷

Accordingly, the Cincinnati Police Department enacted a specific policy directive on foot pursuits, which includes the following excerpt:

Whenever an officer decides to engage, or continue to engage, in a foot pursuit a quick risk assessment must take place. They must evaluate the risk involved to themselves, to other officers, the suspect, and the community versus what would be gained from pursuing the suspect.²⁸

Component Two: A Focus on Alternatives to Force

To effectively manage the use of force and limit its application to situations in which it is warranted, departments should stress alternatives to force, incorporate these into their policies, and offer specific training in these alternatives in ways that complement traditional training in force techniques.

Policy guidelines, instructional literature, and training programs on the use of force—focused, specifically, on issues such as the proper use of firearms, other weapons, and policing equipment; proper physical restraint and handcuffing techniques; and officer safety—are commonplace. Such instruction often includes detailed information regarding the characteristics of armed persons and officer survival techniques. An officer’s use-of-force knowledge base, gained through academy training and subsequent field training, must be continually honed and reinforced through roll-call training and yearly in-service training. It must also be continually tested through qualification tests and simulations.

While this training is absolutely necessary—indeed, vital—to ensuring effective policing as well as the safety of the officers and public, it must be balanced with training that provides viable alternatives to the use of force. Some police executives have expressed concern about the balance of training and instruction directed to “how to use force” as opposed to “how not to use force.” As one police chief noted:

For every hour we spend training our officers in the skills necessary to de-escalate conflict and to avoid the use of force, we spend many more hours teaching officers use-of-force tactics. The message is clear to our officers: use of force is not only appropriate but it is the favored tool for controlling subjects and situations.²⁹

Many departments are attempting to achieve more balance by adding training in de-escalation options, as well as training in recognizing and handling situations in which use-of-force decisions may be particularly critical, such as encounters with the mentally ill.

Verbal De-escalation

Acting on the realization that many violent encounters between a police officer and a subject begin as verbal confrontation, departments have adopted verbal de-escalation training to help officers prevent the need for use of force and to enhance officer safety. Verbal judo, one popular form of de-escalation, is also known as tactical communication. Much like physical judo, verbal judo stresses the use of deliberate verbal response rather than reflexive reaction to others’ words and deeds. Officers are also instructed in the use of conflict management tactics to check their impulse to respond on the basis of personal feeling. The following excerpt from the Pittsburgh Bureau of Police Consent Decree illustrates the purpose of these techniques:

The PBP shall train all officers in the use of verbal de-escalation techniques as an alternative to the use of force, and shall incorporate such techniques into all other training that implicates the use of force. Such training shall include specific examples of situations that do not require the use of force, but may be commonly mishandled, resulting in force being used (for example, individuals verbally challenging an officer’s authority or asking for an officer’s identifying information).³⁰

Recognizing and Responding to the Mentally Ill

Many police departments proactively are enacting policies and providing training that equips officers with basic skills for recognizing mental health issues and responding to them appropriately. Police officers are often called into situations where they are required to confront persons with known mental illness or other debilitating conditions. In other cases, a person's mental illness or temporary mental incapacitation may first become apparent during the encounter. Departmental policies and training prepare the officers to handle the situation at hand, to recognize symptoms of mental impairment, and to obtain those services that the subject needs. The policy of the North Royalton (Ohio) Police Department describes the special attention and consideration that a mentally ill subject should receive:

Intervention Approach

1. Incidents dealing with a mentally ill person require tactful, patient responses. To the extent possible an officer should:
 - a. Attempt to learn about the person [and] the situation by talking with the mentally ill, his family, friends, [and] witnesses.
 - b. Regardless of the person's conduct, respond to them in an objective, non-abusive, non-threatening manner to calm [and] control the person.
 - c. Not deceive the mentally ill person. (Deception thwarts the chance for trust. Trust enhances the opportunity for controlling the subject in a non-violent manner.)
2. If it appears a situation involving a mentally ill person requires police action, a minimum of two officers will be dispatched. A lone officer who encounters such a person will request backup [and] wait for it to arrive unless a life threatening circumstance is occurring.

Source: North Royalton (Ohio) Police Department
Agency Profile: Population 28,000; Officers 39

Departments that do not have specific policies for dealing with the mentally impaired should develop these policies. The IACP has two model policies: “Dealing with the Mentally Ill”³¹ and “Encounters with the Developmentally Disabled.”³² Also, CALEA recently promulgated new standards for police encounters with persons suffering from mental illness.³³

A growing number of departments have established designated units, often called crisis intervention teams (CITs) that are specifically trained to respond to mentally ill subjects and to attend to their unique needs. The Department of Justice MOA with the Cincinnati Police Department (CPD) specifies the core elements of such a unit to be developed in that city.

The CPD will create a cadre of specially trained officers available at all times to respond to incidents involving persons who are mentally ill. These specially trained officers will assume primary responsibility for responding to incidents involving persons who are mentally ill. They will be called to the scene of any incident involving a person who is mentally ill, unless the need for fast action makes this impossible. These officers will respond to any radio run known to involve a person who is mentally ill (including escapes from facilities or institutions). The officers selected for this training should be highly motivated volunteers and should receive high level, multi-disciplinary intervention training, with a particular emphasis on de-escalation strategies. This training will include instruction by mental health practitioners and alcohol and substance abuse counselors. The CPD will develop and implement a plan to form a partnership with mental health care professionals that makes such professionals available to assist the CPD on-site with interactions with persons who are mentally ill.³⁴

Component Three: Assuring Accountability in the Use of Force

To effectively manage the use of force, departments must establish strong accountability mechanisms to ensure that use-of-force incidents are reported, reviewed, and, as necessary, investigated, and that the results of these processes are used to enhance department management.

As previously noted, the authorization to use force is an awesome power that carries with it a tremendous amount of responsibility. Departments fulfill this responsibility, in part, by implementing strong supervision and strict accountability mechanisms. Use-of-force policies commonly require systematic reports, reviews, and, as necessary, investigations, of use-of-force incidents involving physical force. The need for these systematic steps cannot be overstated. They are the subject of extensive discussion in federal consent decrees and MOAs.

Use-of-Force Reporting

Although use-of-force policies typically do not require reporting for low levels of force (i.e., when handcuffs are applied in a routine manner or with soft-hands control), these policies increasingly require that use-of-force incidents be reported if the level of force meets or exceeds an agency defined threshold. While this level varies by department, it is most often

set at some less-lethal force level (e.g., “anything above soft-hands control”). Typically, these policies specify the format and required elements of use-of-force reports. The following policy of the Colorado Springs (Colorado) Police Department illustrates such reporting requirements:

NON-LETHAL FORCE [REPORTING]: When a chemical agent, the baton, or any other non-lethal instrument of physical force has been used against any person, the officer(s) involved shall document the incident by inclusion either in a case report or incident report. In all instances, a copy of the report shall be sent through channels to the Division Commander. A cover memorandum containing supplementary or explanatory information may be attached at the officer’s discretion or if necessary to complete the required information. Details of the memorandum and/or report shall include:

- Circumstances surrounding the action
- Type of force used
- Reasons for the use of force
- Extent of injury to the officer or other person
- Medical treatment required
- The name of the medical facility used
- Other pertinent information the officer wishes to include.

Source: Colorado Springs (Colorado) Police Department
Agency Profile: Population 315,000; Officers 501

Reporting Medical Intervention and Follow-up

In addition to requiring reports whenever a use-of-force incident exceeds a certain level of force, policies generally require medical follow-up in the event that a use-of-force incident results in an apparent injury or claim of injury involving the subject, bystanders, or officers. Additionally, policies mandate medical follow-up when certain force options are exercised (e.g., CEDs or chemical sprays) even when injury is not apparent or there is no claim of injury. Typically, all apparent injuries, complaints of injuries, and medical attention must be documented and reported, even when the level of force used was below the agency defined threshold for reporting. The following policies from the Marietta (Georgia) Police Department and the Oregon State Police are representative of such requirements:

Medical Care [after use of Oleoresin Capsicum Spray/Foam]

A. Police officers and Civilian Transport Officers shall notify communications as soon as possible after the use of O.C. spray/foam. Police officers and Civilian Transport Officers shall request fire rescue, an ambulance, and a supervisor. A police officer or Civilian Transport Officer shall accompany the individual to the hospital and shall remain there until properly relieved, or until the individual is released from medical care by hospital personnel.

B. Should the individual resist attempts to decontaminate by medical personnel, the police officer or Civilian Transport Officer will document this refusal to cooperate in the departmental incident report, and monitor the individual closely while at the hospital and during all phases of transport. The police officer or Civilian Transport Officer will then notify detention personnel of the individual's resistance to treatment so the detention personnel can closely monitor the individual.

Source: Marietta (Georgia) Police Department
Agency Profile: Population 45,856; Officers 135

In all use-of-force incidents, including those in which a person is injured, or an employee becomes aware that a person has reported to have sustained an injury during the course of action taken by the sworn employee, a supervisor will be notified as soon as practicable. The supervisor will review the specific circumstances of the respective case and determine if a report to General Headquarters through the chain of command is needed.

Source: Oregon State Police (www.egov.oregon.gov/osp)
Agency Profile: Population 3,480,000; Officers 871

Reviewing Use of Force

Policies often require formal review of use-of-force incidents, generally when such incidents exceed an agency specified level of force. In some departments, the threshold for *reviewable* force is consistent with the threshold for *reportable* force. Typically, reviewable use-of-force incidents include any use of force involving a weapon, whether deadly or nondeadly, and any use of force involving apparent or alleged injury or death. In virtually all departments, the discharge of a firearm must be reviewed.

In many departments, the type of review depends on the level of force used. Some departments draw a distinction between review required with relatively low levels of force and higher levels. Lower level use of force will result in an initial supervisory review that may be followed by reviews up the chain of command. Higher levels of force often result in automatic review by specialized units (e.g., internal affairs or critical incident units) and/or independent bodies (civilian review boards). The following policy of the Des Moines (Washington) Police Department lays out a protocol for reviewing standard use-of-force reports:

Review Of Use Of Force Reports: Team sergeants are responsible for reviewing case reports and the department "Use-of-Force" report form. Sergeants will forward all reports to the Operations Commander for review and submittal to the Chief of Police.

Appropriate reports will be prepared for each incident in which a Use-of-Force Report is necessary by the end of the shift on which the incident occurred. It must include the facts that made the use of force necessary and shall explain in detail the nature and amount of force used. It is the responsibility of the supervisor reviewing the report to insure that thorough and accurate documentation is provided.

Source: Des Moines (Washington) Police Department
Agency Profile: Population 29,267; Officers 43

First-line supervisors should be held accountable for assessing both individual cases and overall use-of-force patterns by their subordinates. Individual officers who show more frequent use of force or a tendency to use higher levels of force when compared to peers in similar assignments should be assessed more closely for possible intervention. Ideally, this function should be integrated into a broader early intervention strategy, as discussed in Chapter 3 of this guide.

Use-of-Force Investigations

Going beyond report reviewing, many departments have recognized the value of thoroughly investigating all serious use-of-force incidents. To limit liability and assure accountability, these departments require thorough, open, and fair investigations by qualified investigators whenever an officer discharges a firearm, deploys other deadly force, or whenever the deployment of force results in death or serious injury. While investigation protocols may differ, the following elements are a vital part of an investigatory process that will ensure accountability within the department and confidence within the community:

- The investigation should include a full chronology of events that occurred before, during, and immediately following the use of force.
- The investigation should be fair, thorough, and conducted with the same rigor as is afforded to major crime investigations. Although many use-of-force investigations will reveal that the use of force is justified, the transparent and rigorous nature of these investigations can shore up public confidence.
- The investigator should be selected and trained specifically to fulfill this task. Efforts should be made by police leaders to identify particular persons who are well suited to this role because not all individuals have the aptitude or commitment to perform these types of investigations. The ability of individual investigators to conduct thorough investigations should be continually assessed. The systematic review of investigatory reports and taped investigatory interviews should be part of the overall assessment.
- The investigation should apply the consequences for willful and blatant use of excessive force clearly and uniformly. They should result in the appropriate level of discipline to re-enforce the message that unlawful force will not be tolerated.

While all investigations share the above-mentioned elements, departments will vary in how the investigatory processes are organized. Large police departments may have sufficient resources to support specific units that investigate incidents of serious nondeadly and deadly force deployment. Smaller agencies, however, may have neither the resources nor the staff to support these units. Indeed, the incidence of deadly force deployments may be so rare in smaller agencies that specific investigatory units may not make sense even if resources could be made available. Many smaller police agencies will turn to outside agencies, often the state police, to conduct these investigations. Other innovative approaches also exist. The investigatory processes identified in the text boxes—one adopted in the Boston (Massachusetts) Police Department and another in Champaign County, Illinois, where several local police agencies have pooled their resources and established the Multi-Jurisdictional Investigation Team—demonstrate two different approaches.

The Boston “Team Model” of Force Investigations

The Boston Police Department has a Firearms Discharge Investigation Team (FDIT) divided into two units, a “red” team and a “blue” team. Despite the name, the FDIT investigates other types of force besides firearms discharges. The red team responds to deaths or major injuries, while the blue team investigates non-lethal discharges, less-lethal, and animal dispatches. The FDIT protocol divides components of investigation, assigning responsibilities to squads that provide distinct and uniform information, without overlap, to the team commander. Investigators are divided into four teams—Crime Scene, Interview, Intelligence, and Organizational—each headed by a team leader. In addition to the teams, an incident coordinator assists the lead investigator/incident commander in procuring personnel and equipment, obtaining logistical support, and keeping a record of who did what and when. Each team has specific responsibilities as outlined in the protocol; for example the responsibilities for the Crime Scene Team include: Securing the scene and setting an access point; obtaining information needed for search warrant application, if applicable; logging all persons and equipment entering the scene; and relevant photography and videotaping at the scene. The scene team is also responsible for obtaining crime scene evidence and seeking out other relevant evidence (e.g., bank surveillance tapes).

Source: Boston (Massachusetts) Police Department, Firearms Discharge Investigation Team Agency Profile: Population 604,000; Officers 2050

Champaign County Multi-Jurisdictional Team Approach to Investigations :

The Champaign County (Illinois) Serious Use of Force Investigation Team is composed of five agencies (combined sworn 370), representatives from the Illinois State Police and the local district attorney. The team serves as the primary response and investigation unit to an officer-involved shooting in the county (pop. 175,000). Each agency has two response personnel assigned to the team. For any incident the representative for the agency being investigated may not be the lead case investigator, but can serve as a facilitator of information for the lead agent.

The team came about in response to a controversial shooting in mid-1990s and has evolved since. One issue that arose frequently was that officers involved were often unsure of what was going to happen in the investigation, so the team came up with a guide for line officers that delineates the step in the investigation process and the role of the officer being investigated in that process. This guide has proven effective and is now utilized in yearly in-service trainings of all officers in the five agencies. The team recently developed an updated field investigation manual that every investigator has and serves as the guide for conducting the inquiry. The manual includes the county-wide use of force policy and the memorandum of understanding that was used to establish the teams. Administrative forms such as a team-leader assignment sheets, as well as checklists for interview teams, crime scene technicians, and other involved parties. Also included are neighborhood canvass forms and photo evidence forms.

Source: Sgt. Bryant Seraphin, Urbana (Illinois) Police Department Team Coordinator

Concurrent Criminal Investigations

Occasionally, use-of-force investigations will reveal that the officer's actions constitute potential criminal behavior. While internal procedures—including supervisory reviews, internal affairs division reviews, and department-based critical incident team reviews—are suitable for addressing alleged or apparent use-of-force violations, criminal behavior must be addressed through appropriate criminal procedures. Federal agreements are unequivocal on this point. As an excerpt from the MOA with the Metropolitan Police Department in Washington, D.C., makes clear, "[the] MPD shall consult with the USAO [United States Attorney's Office] regarding the investigation of an incident involving deadly force, a serious use of force, or any other force indicating potential criminal misconduct by an officer."³⁵

Department policies and practices may vary as to whether the department's internal use-of-force investigation would be ongoing at the same time as the prosecuting attorney's criminal investigation. If investigations are simultaneous, all reasonable attempts should be made by both the department and the prosecutor's office to coordinate efforts. However, there may be certain circumstances under which it might not be advisable to share information or under which the department may need to suspend its investigation, or parts of its investigation, in deference to the prosecutor. As the following excerpt from the MOA with the Metropolitan Police Department in Washington, D.C., states:

If the USAO [United States Attorney's Office] indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 60. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.³⁶

Use-of-Force Reports, Reviews, and Investigations as Management Tools

Many departments have found value in using aggregated use-of-force data to assess trends and patterns and to help make informed management decisions. Current policies often require agencies to conduct some form of aggregate analysis to detect patterns and trends in the use of force across the department. Aggregate analyses at the individual or unit level allow for comparisons against normative standards consistent with early intervention management strategies discussed in Chapter 3. For instance, do particular officers or units have inordinately high reportable or reviewable use-of-force incidents relative to similar officers or units? Aggregate analyses at the agency level can serve a critical feedback and accountability function. For instance, does analysis reveal that reportable use-of-force incidents increase when particular force options are introduced, removed, or replaced? Such analyses can

identify the need to change policies, to revisit training, to update a department's use of force options, or to redefine weapon deployment practices. The Pittsburgh Bureau of Police relies on use of force analyses to improve agency management:

The Pittsburgh Bureau of Police issues what it calls "Subject Resistance Reports" for reportable uses of force.³⁷ These reports serve the purpose of allowing a mechanism for standardized review of cases and also provide valuable information that can be used in quantitative analyses. Information from these reports is tracked and maintained as part of the Bureau's Personnel Performance System (PARS) and reviewed quarterly at COMPSTAR. Trends and patterns of subject resistance incidents (use of force) are reviewed by managers. Analysis includes comparisons across police sectors; precipitating circumstances (e.g., warrant arrests, prisoner transports, etc); how use-of-force incidents trend alongside monthly calls for service and arrest data. From a managerial perspective, data analysis allows department leaders to spot trends and take effective action to mitigate issues.³⁸

Component Four: Maintaining Public and Media Relations

To effectively manage the use of force, departments must handle media and public relations proactively rather than reactively.

Use-of-force incidents that make headline news or appear as the lead story on the local evening news present both a challenge and an opportunity for police executives. In high-profile cases, police executives face the potential challenge of serving two constituencies—the rank-and-file officers and the local residents—who are sometimes at odds regarding use-of-force incidents. Whether holding a press conference or responding to the media on such volatile issues, police executives should maintain a posture of neutrality, fairness, and transparency. In maintaining this posture, police executives may realize opportunities to communicate effectively with the community. The media is the primary vehicle through which agencies communicate with the public. Police executives should establish a media relations strategy that makes proactive use of this outlet for communication rather than dealing solely in a reactive mode during moments of crisis.

Establishing Community Support Prior to Critical Use-of-Force Incidents

Police executives must proactively build relationships of trust with community leaders, community members, and the local media before critical incidents occur. Developing and sustaining such contacts through community meetings, participation in community events, citizen academies, public awareness campaigns, and the department web site is an essential part of any community outreach strategy. Establishing and maintaining strong ties with political, religious, and business leaders within the community will benefit the department. Developing a foundation of trust with the community can be thought of as putting "money in the bank," so that community support can be drawn on when needed. Police executives should be particularly attentive to proactively informing community stakeholders about the department's use-of-force policies, practices, and accountability mechanisms. It is better that the public is informed of these details before a critical use-of-force incident occurs than after.

Departments should avail themselves of the resources that will help them establish good community and public relations and that promote education regarding use-of-force policies and practices. The U.S. Department of Justice Community Relations Service (CRS) provides several resources that can help police establish good relations with key community stakeholders and community members before critical incidents occur as well as guidelines that executives can use to assist in mediation with community members after an incident.

Police executives should consider CRS's practical handbooks including *Principles of Good Policing: Avoiding Violence Between Police and Citizens* (September 2003), *Responding to Incidents Involving Allegations of Excessive Use of Force: A Checklist to Guide Police Executives* (Revised September 2003), *Distant Early Warning Signs (DEWS) System* (November 2001), and *Community Dialogue Guide* (September 2003). These and other publications are available for download at www.usdoj.gov/cr.

Police executives, or designees such as public information officers, are often expected to make statements immediately following critical and often controversial use-of-force incidents. When doing so, police executives must remain objective and neutral. It is never advisable to express premature judgments about incidents before investigations are completed. While initial evidence may seem to point in a certain direction, it is a disservice to the purported victim of excessive force, the community, and the officer(s) involved to make premature statements. The message police executives should strive to convey as soon after a controversial use-of-force incident as possible is that the incident is under investigation and that the investigation will be thorough. Police executives should underscore this message by discouraging any speculation by the media, the public, or other police personnel before the investigation is complete. A police executive may express empathy for the subject who may have been harmed and for the officers involved, as appropriate, but in doing so should avoid any suggestion of bias toward either side.

Sharing Use-of-Force Data with the Public

Many departments elect to share aggregate information about use of force with the public through web sites or annual reports. Using the department web site to publish use-of-force reports sends an important message of accessibility and transparency. In some instances, federal agreements have stipulated providing aggregate use-of-force data to the public. The MOA between the Department of Justice and the Metropolitan Police Department in Washington, D.C., establishes such a requirement:

MPD shall prepare quarterly public reports that include aggregate statistics of MPD use-of-force incidents broken down by MPD districts covering each of the geographic areas of the City, indicating the race/ethnicity of the subject of force. These aggregate numbers shall include the number of use-of-force incidents broken down by weapon used and enforcement actions taken in connection with the use of force. The report shall include statistical information regarding use-of-force investigations conducted, including the outcome. The report shall also include the total number of complaints of excessive force received, broken down by MPD Districts, and the number of complaints held exonerated, sustained, insufficient facts, and unfounded.³⁹

While the Metropolitan Police Department in Washington, D.C, does publish detailed statistical summary reports on a quarterly basis,⁴⁰ other agencies report data at the case level, describing them with short synopses. The Iowa City (Iowa) Police Department, for instance, provides monthly reports with brief narrative descriptions on its web site.⁴¹ A portion of the web site is depicted below:

**IOWA CITY POLICE DEPARTMENT
USE OF FORCE REPORT
October 2005**

OFFICER	DATE	INC#	INCIDENT	FORCE USED
20,44	100105	49648	Open Container	Subject was placed under arrest and resisted handcuffing efforts. Officers attempts to use control techniques were unsuccessful. Officers than exposed the subject to a chemical irritant and used control techniques to place handcuffs on the subject.
95,09	100205	49892	Public Intoxication	Subject was placed under arrest and resisted handcuffing efforts. Officers used control techniques to place handcuffs on the subject.
31	100305	50091	Vehicle Pursuits	Officers attempted to stop a vehicle reference a welfare check on the driver. The driver failed to yield and a pursuit began. After a short distance the pursuit was discontinued.
36	100605	50573	OWI	Subject to assault officers. Officers used control techniques to place handcuffs on the subject.

In many departments, internal policies or collective bargaining agreements with police unions may affect the type of information that can be publicly posted. If information is posted at the incident level, data must be “sanitized” to not to allow any civilian subject or officer to be personally identified.

Recommendations

On the basis of its assessment of federal consent decrees and MOAs as well as the preceding discussion, the IACP offers the following recommendations on use-of-force policies and practices. Because use-of-force options—techniques and technologies—continue to evolve, these recommendations should not be considered static. The recommendations below correspond sequentially to the goals of creating clear and comprehensive use-of-force policies, effective use-of-force training, robust accountability mechanisms, and fair and transparent media and public relations.

1. Implement a clear use-of-force policy that specifically addresses both deadly and nondeadly use of force and that is consistent with all legal and professional standards.

Regardless of size or function, all agencies should have a use-of-force policy with directives on deadly and nondeadly force. These policies, which must be clear and easy to interpret, should not be less restrictive than applicable state laws or professional standards.

2. Implement a comprehensive use-of-force policy that addresses all available use-of-force options, clearly places these options within a force continuum or a force model, and associates these options with corresponding levels of subject resistance.

Special care should be taken to assure that the department's use-of-force policy is comprehensive. The policy must cover all use-of-force deployment options—techniques and technologies—authorized within the department. It should include the use-of-force options available to all sworn officers as well as options available only to specialized units (e.g., canine units or SWAT teams). The following two recommendations provide more detail that may be applicable to certain departments.

3. Address canine deployment as a use-of-force option in policies and develop detailed directives regarding its use.

Departments should make clear that canine deployment for pursuit purposes or to establish subject compliance is a use-of-force option. Use-of-force policies should articulate whether a department relies on a “find-and-bark” and/or “find-and-bite” strategy. Policies should require that, whenever feasible, a clear verbal warning be issued and a reasonable allowance of time made for subjects to comply before canines are released.

4. Address CEDs (conducted energy devices)—often referred to by the brand name *Taser*™—as a use-of-force option in policies and develop detailed directives regarding its use.

Although no clear consensus yet exists regarding the relative benefits and risks of CEDs, these devices are clearly a use-of-force option and must be included on the use-of-force continuum in every department where they are in use. Determining where CEDs should appear in the use-of-force continuum should depend on the specific manner of deployment allowed by the agency's policy directive. The consensus opinion of advisors to this project is that CEDs should

be placed no lower than irritant spray. Regarding Tasers™, the Police Executive Research Forum recently announced its recommendation that these weapons should be used only on people who are aggressively resisting arrest.⁴²

Policies should require that, whenever feasible, a clear verbal warning be issued and a reasonable allowance of time made for subjects to comply before a CED is deployed. Agencies should also carefully consider including provisions, special-risk considerations, or restrictions regarding the use of CEDs on particular subjects including the young, the elderly, the mentally disturbed, persons with known medical conditions, and persons on drugs. Finally, a department's CED policy should address the duration of electrical charges and the number of charges that may be applied to a subject. These types of limitations on CED deployment are likely to evolve as more departments consider their use, fine-tune their policies and training, and as more data become available about potential risks of this technology

5. Review and update use-of-force policies to reflect changes in use-of-force options, laws, and standards.

Whenever techniques or technologies that are used as use-of-force options are acquired or upgraded, relevant policies should be reviewed and updated as necessary. In addition to monitoring the development of new techniques and technologies that may affect use-of-force options, department personnel should monitor relevant legal cases, medical research, and professional research that may necessitate use-of-force policy revisions.

6. Provide specialized and comprehensive training and testing for the department's full range of use-of-force options.

Departments should provide training to ensure competency in all use-of-force options used within the department. Specific performance and competency testing criteria should be used and requalification should occur on a regular basis. The steps that officers who fail to requalify must take should be fully articulated. Training and competency testing should be kept current with changes in the use-of-force options available within the department or as officers are assigned to specialized assignments or units with access to different force options.

7. Provide specialized training on verbal de-escalation techniques and other appropriate alternatives to the use of force.

To minimize use of force by preventing escalation, use-of-force policies should expressly encourage verbal de-escalation techniques and provide the necessary training. Training should be of the highest standards and officers should receive periodic refresher courses.

8. Specify the circumstances under which supervising officers, or specialized units such as force investigation teams (FIT), must report to the scene of a use-of-force incident.

Use-of-force policies must define what is meant by a "serious" use-of-force incident and must require supervisors to report to the scene of all serious use of force incidents, including all incidents in which deadly force is deployed and all incidents resulting in serious injury to or death of an officer, subject, or bystander. Use-of-force policies should also, to the extent practical, require supervisors or FITs to report to the scene of any incident in which excessive

force is alleged. The presence of supervisors or FITs provides support to officers at the scene and enhances accountability.

9. Clearly stipulate the level of force at which a written use-of-force report is required.

Use-of-force policies should clearly stipulate the level of force at which written use-of-force report is required. The consensus recommendation of the advisors to this project is that any instance of force above “soft-hand control” should be considered a reportable use of force. If the department does not use a use-of-force continuum, then the force options, the circumstances of deployment, and the outcomes that result in a reportable use of force must be explicitly articulated. Policies should require a use-of-force report any time there is an apparent injury or a complaint of injury, even if the force used otherwise would have been below the reportable force threshold. Policies should require a use-of-force report any time there is a complaint about the level of force deployed. These reports must be initiated whether the complaint is filed by the subject or by a third party who witnessed the use of force. Reports aid supervisors and investigators in resolving such complaints.

10. Clearly stipulate the level of force at which a use-of-force review is required.

Use-of-force policies should clearly stipulate the level of force at which use-of-force review is required. The consensus recommendation of the advisors to this project was that, as with reportable force, any instance of force above “soft-hands control” should be considered a reviewable use of force.

11. Ensure that accountability mechanisms including use-of-force investigations for allegations of excessive force or force without cause are fair, thorough, rigorous, and transparent.

Unlawful or excessive use of force is contrary to the ethics of policing, creates tremendous liabilities, and undermines the credibility of the department in the eyes of the public and the department members themselves. In response, law enforcement leaders must hold themselves, their supervisors, and their officers to the highest levels of accountability. Investigatory processes must be fair, thorough, rigorous, and transparent. They must be staffed with investigators who are appropriately motivated, skilled, and trained for these duties. Disciplinary actions should be fair, while making it explicit that no unlawful or willfully excessive force will be tolerated.

12. Collect and analyze use-of-force data for organizational management and assessment purposes.

Departments should collect data that will allow them to analyze the frequency of use-of-force incidents over time and across units. Data collection should be frequent enough to enable analysis on a monthly or quarterly basis. Analyses should assess the impact of changes in policy, training, or force options. Analyses should assess trends in use-of-force complaints and use-of-force-related injuries to officers and subjects. Use-of-force data should be routinely reviewed by supervisors and, ideally, incorporated into the data-management system as part of early intervention. Ultimately, police executives should assess whether they are moving

in the right direction with use of force, whether use-of-force standards are equally applied across the department (with appropriate consideration of difference in risk across units and assignments), and whether the trends reflect professional standards and a commitment to the community and civil rights.

13. Establish proactive media and public relations strategies regarding department use-of-force policies and practices.

Departments should not wait for a critical use-of-force incident to occur before beginning to educate the media, public officials, and the general public regarding use-of-force policies and practices. Establishing community outreach strategies will build the social capital on which departments may draw in the event of a critical use-of-force incident.

Conclusion

The use force in police-citizen encounters is one of the most complex and emotionally charged issues in law enforcement. Officers must make decisions that are compliant with applicable laws, professional standards, and departmental policies, often in the context of split-second life-or-death circumstances. While the safety of officers and civilians remain a paramount concern, law enforcement leaders must create accountability mechanisms to ensure that the application of force remain within legal strictures or “reasonableness.” As force tools and techniques continually evolve, departments must carefully consider their use-of-force options. Maintaining public relations and respect for civil rights must continually be part of the decision-making equation.

Suggestions for Further Reading

Because use of force—and the proper deployment of associated weapons and techniques—remain a complex and often debated issue, much has been written on the topic, particularly from an operational and legal perspective. As can be seen from the forgoing discussion, use of force raises civil rights and community outreach implication as well. Recent publications on use of force that address these issues include the following.

Alpert, Geoffrey P., and Roger G. Dunham. *Understanding Police Use of Force: Officers, Suspects, and Reciprocity*. Cambridge University Press, New York; 2004.

U.S. Department of Justice Community Relations Service. *Police Use of Force: Addressing Community Racial Tensions*. August 2002. www.usdoj.gov/crs/pubs/pubbullpoliceuseofforcedraftrevision72002.htm

Walker Samuel. *The New World of Police Accountability*. Sage Publications Inc., Thousand Oaks (California); 2005.

Peters, John G. “Force Continuums: Three Questions.” *The Police Chief*. January 2006.

Endnotes

- ¹ Ramsey, Charles H. in a letter to Deputy Attorney General of the United States Available on January 6, 1999. Available on the web at www.dcwatch.com/police/990106.htm.
- ² *Police Use of Force in America*. Alexandria (Virginia): International Association of Chiefs of Police, 2001.
- ³ Langan, Patrick A., Lawrence Greenfeld, Steven K. Smith, Matthew R. Durose, and David J. Leven. *Contacts between Police and the Public—Findings from the 1999 National Survey*. United States Department of Justice, Bureau of Justice Statistics (February 2001) NCJ-184957.
- ⁴ Hickey, Edward R.; Garner, Joel H., *The Rate of Force Used by the Police in Montgomery County, Maryland, Executive Summary [and Final Report]: A Report to the Montgomery County Department of the Police and the National Institute of Justice*. Washington, D.C.: United States Department of Justice, National Institute of Justice (March 2002) NCJ-199877.
- ⁵ It is also relevant to note, that departments with expansive early intervention systems, such as Pittsburgh and Phoenix discussed in Chapter 3, collect the basic data (reportable use of force and arrest data) that allow for routine calculation of rates per arrest.
- ⁶ Adams, K. (1996). Measuring the Prevalence of Police Abuse of Force. In W. A. Geller, and Toch, H. (Eds.), *Police Violence: Understanding and Controlling Police Abuse of Force* (pp. 52-93). New Haven (Connecticut): Yale University Press. Adams maintains that the proportion of encounters that involve use of force can vary as definitions of “use of force” vary. In the cited studies, for instance, the routine application of handcuffs was not considered a use of force. Defining routine handcuffing as use of force would certainly drive the rate of using force much higher. The rate of use of force is also influenced by the types of police citizen contact that are examined. Studies that focus on exclusively on arrests rather than traffic stops tend to identify considerably higher rates of use of force since arrests are more likely to involve resistance, confrontation, and retaliation than traffic stops. Still, even considering these measurement issues, the use of force remains a rare event.
- ⁷ *United States v. City of Detroit, Michigan, and the Detroit Police Department*, Consent Judgment. (June, 12, 2003) Available on web at www.usdoj.gov/crt/split/documents/dpd/detroitpd_uofwdcd_613.pdf.
- ⁸ United States Department of Justice and the Metropolitan Police Department of the District of Columbia. (June 13, 2001) Available on web at www.usdoj.gov/crt/split/documents/dcmoa.htm.
- ⁹ International Association of Chiefs of Police Model Policies. Use of Force. February 2005.
- ¹⁰ Means, Randy, and Eric Edwards. “Chief’s Counsel: Electronic Control Weapons: Liability Issues.” *The Police Chief*, November 2005: 10-11.
- ¹¹ See Police Executive Research Forum, Center on Force & Accountability. *PERF Conducted Energy Device Policy and Training Guidelines for Consideration* and the associated document Conducted Energy Device (CED) Glossary of Terms. October 2005.
- ¹² *United States v. City of Detroit, Michigan and the Detroit Police Department* Consent Judgment (06/12/03). Available on the web at www.usdoj.gov/crt/split/documents/dpd/detroitpd_uofwdcd_613.pdf.
- ¹³ *Bell v. Wolfish*, 441 U.S. 520 (1979).
- ¹⁴ *Graham v. Connor*, 490 U.S. 386 (1989)

- ¹⁵ "Sample Directives for Virginia Law Enforcement Agencies." Use of Force Directive. Effective Date: July 1, 1999. Virginia Division of Criminal Justice Services. Available on web at www.dcjs.virginia.gov/cple/sampleDirectives/manual/pdf/2-6.pdf.
- ¹⁶ *United States of America v. City of Detroit, Michigan and the Detroit Police Department* Consent Decree (06/12/03). Available on web at www.usdoj.gov/crt/split/documents/dpd/detroitpd_uofwdcd_613.pdf.
- ¹⁷ Petrowski, Thomas D. "Use-of-force Policies and Training: a Reasoned Approach - Legal Digest" *The FBI Law Enforcement Bulletin*, October 2002. Available on the web at www.fbi.gov/publications/leb/2002/oct02leb.pdf.
- ¹⁸ Police Executive Research Forum, Center on Force & Accountability. *Conducted Energy Device (CED) Glossary of Terms*. October 2005
- ¹⁹ Electro-Muscular Disruption Technology 'A Nine-Step Strategy for Effective Deployment'. Alexandria (Virginia): International Association of Chiefs of Police, 2005. Available on the web at www.theiacp.org/research/RCDCuttingEdgeTech.htm.
- ²⁰ International Association of Chiefs of Police Model Policies. Use of Force. February 2005.
- ²¹ Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department. (06/13/2001) Available on the web at www.usdoj.gov/crt/split/documents/dcmoa.htm.
- ²² Memorandum of Agreement Between the United States Department of Justice and the City of Cincinnati, Ohio and Cincinnati Police Department. (4/12/2002) Available on the web at www.usdoj.gov/crt/split/Cincmoafinal.htm.
- ²³ *Sample Directives for Virginia Law Enforcement Agencies*. Use of Force Directive. Effective Date: 1 July 1999. Virginia Division of Criminal Justice Services. 17 Nov. 2005 Available on the web at www.dcjs.virginia.gov/cple/sampleDirectives/manual/pdf/2-6.pdf.
- ²⁴ *Acosta v. City and County of San Francisco* 83 F.3d 1143, 1147 (9th Cir. 1996)
- ²⁵ Alpert, Geoffrey, Dennis Kenney, Roger Dunham, William Smith and Michael Cosgrove. "Police Pursuit and the Use of Force, Final Report." Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1996, NCJ-64833.
- ²⁶ International Association of Chiefs of Police Model Policies. Use of Force. February 2005.
- ²⁷ Memorandum of Agreement Between the United States Department of Justice and the City of Cincinnati, Ohio and Cincinnati Police Department. (4/12/02). Available on the web at www.usdoj.gov/crt/split/Cincmoafinal.htm.
- ²⁸ Streicher, Thomas H. "Staff Notes." May, 20 2003. Cincinnati Police Department. Available on 10 October. 2005 from www.cincinnati-oh.gov/police/downloads/police_pdf5988.pdf.
- ²⁹ Gruber, Charles. "A Chief's Role in Prioritizing Civil Rights." *The Police Chief International Association of Chiefs of Police*. November 2004. Available on the web at www.policechiefmagazine.org/magazine select "Archive."
- ³⁰ *United States v. City of Pittsburgh* Consent Decree. (02/26/97) Available on web at www.usdoj.gov/crt/split/documents/pittscomp.htm.
- ³¹ International Association of Chiefs of Police Model Policies. *Dealing with the Mentally Ill*. February 2005.
- ³² International Association of Chiefs of Police. Model Policies. *Encounters with the Developmentally Disabled*. March 2003.
- ³³ Commission on Accreditation for Law Enforcement Agencies (CALEA) standard 41.2.8.

- ³⁴ Memorandum of Agreement Between the United States Department of Justice and the City of Cincinnati, Ohio and Cincinnati Police Department. (4/12/2002) Available on the web at www.usdoj.gov/crt/split/Cincmoafinal.htm.
- ³⁵ Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department. (06/13/2003) www.usdoj.gov/crt/split/documents/dcmoa.htm. Note: Operating in a federal jurisdiction, the U.S. Attorney's Office (USAO) in the District of Columbia holds the same responsibilities that local prosecutors hold in other jurisdictions.
- ³⁶ Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department. (06/13/2003) www.usdoj.gov/crt/split/documents/dcmoa.htm.
- ³⁷ By policy, the Pittsburgh Police Bureau Subject Resistance Report Form **must** be completed for any use of force with the exception of: (1) mere presence of police officers and canines, (2) verbal commands, (3) handcuffing with no or minimal resistance when transporting, (4) come along holds, (5) physical removal of peacefully resisting demonstrators, and (6) displaying or unholstering of a firearm.
- ³⁸ Davis, Robert C., Christopher W. Ortiz, Nicole J. Henderson, Joel Miller, and Michelle K. Massie. *Turning Necessity into Virtue: Pittsburgh's Experience with a Federal Consent Decree*. New York: Vera Institute of Justice, 2002.
- ³⁹ Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department. (06/13/2003) www.usdoj.gov/crt/split/documents/dcmoa.htm.
- ⁴⁰ *Metropolitan Police Department Use of Force Statistics 2005* (Quarter 2). Force Investigation Team. September 29, 2005. Available on the web at: www.mpdcc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/publications/useofforce/FIT_2005_Q1.pdf.
- ⁴¹ *Use of Force Report: October 2005*. Iowa City Police Department. Available on web at www.icgov.org/police/useofforce.asp.
- ⁴² Crowe, Robert. "Police Think Tank Urges Rules for Taser Use." *Houston Chronicle*. October 20 2005 (Internet). See also: Police Executive Research Forum, Center on Force & Accountability. PERF Conducted Energy Device Policy and Training Guidelines for Consideration. October 2005.